

Town of Arlington, MA Redevelopment Board

Agenda & Meeting Notice November 13, 2017

The Arlington Redevelopment Board will meet Monday, November 13, 2017 at 7:30 PM in the Town Hall Annex, 2nd Floor Conference Room, 730 Massachusetts Ave. Arlington, MA. 02476

1. Public Hearing EDR Special Permit for Docket #3545 to allow new construction of a mixed-use residential and commercial property at 87-89 Broadway, Arlington, Massachusetts, in the B2 Neighborhood Business District

7:30-8:30p.m. (60 mins.)

- Applicant will be provided 10 minutes for an introductory presentation.
- DPCD staff will be provided 5 minutes for an overview of their feedback and comments as provided in the Public Hearing Memorandum
- Members of the public will be provided time to comment.
- Board members will ask additional questions and vote.

2. Zoning Recodification Update

8:30-8:40p.m. Staff and board members will provide an update on zoning recodification, upcoming community engagement, and meetings.

3. Follow-Up from October 2, 2017 discussion regarding MGL Chapter 91

8:40-8:50p.m. Board will discuss material provided relative to MGL Chapter 91 (10 mins.) requirements.

4. Conservation Commission Regulations for Wetlands Protections - proposed revisions

8:50-9:05p.m. Board will discuss new correspondence from the Conservation Commission regarding new proposed revisions to the Conservation Commission's regulations and next steps.

5. Approval of Meeting Minutes from October 2, 2017

9:05-9:15p.m. Board members will review minutes from the previous ARB meeting and (10 mins.) provide feedback for edits and vote.

6. Adjourn

9:15p.m. ARB members will adjourn.



Town of Arlington, Massachusetts

Public Hearing EDR Special Permit for Docket #3545 to allow new construction of a mixed-use residential and commercial property at 87-89 Broadway, Arlington, Massachusetts, in the B2 Neighborhood Business District

Summary:

7:30-8:30p.m. (60 mins.)

- Applicant will be provided 10 minutes for an introductory presentation.
- DPCD staff will be provided 5 minutes for an overview of their feedback and comments as provided in the Public Hearing Memorandum.
- Members of the public will be provided time to comment.
- Board members will ask additional questions and vote.

ATTACHMENTS:

	Туре	File Name	Description
D	Reference Material	87-89_Broadway_Application.pdf	87-89 Broadway Application
ם	Reference Material	87- 89_Broadway_Impact_Statement.pdf	87-89 Broadway Impact Statement
D		87-89_Broadway_Abutter_List.pdf	87-89 Broadway Abutter Notification List
ם	Reference Material	87-89_Broadway_Site_Plan.pdf	87-89 Broadway Site Plan
ם	Reference Material	Public_Hearing_Memo_87- 89_Broadway.pdf	Public Hearing Memo 87-89 Broadway



TOWN OF ARLINGTON REDEVELOPMENT BOARD

Application for Special Permit In Accordance with Environmental Design Review Procedures (Section 11.06 of the Zoning Bylaw)

į.	Property Address	87-89 1	Broadway		Doc	ket No. <u>3545</u>
1.	Name of Record Ow				Phone	978-808-6621
	Address of Owner _	508 Groton Rd	tyriri, Opringoodi	. Westfo	ord MA	
	Address of Owner _	Street		City, S	tate, Zip	
2	Name of Applicant(s	(if different than a	nove)			
2.	Address) (11 difficient man at			Phone	
	AddressStatus Relative to Pro	perty (occupant, pur	rchaser, etc.)			
2						
3.	Location of Property	Asse	essor's Block Plan, l	Block, Lot No.		
4.	Deed recorded in the -or- registered in Lan	Registry of deeds, E d Registration Offic	Book 69090 , Pa e, Cert. No	nge <u>294</u> ; , in Book	, Page	;·
5.	Present Use of Prope	rty (include # of dwe	elling units, if any)	UNDEVELOPED	-	
6.	Proposed Use of Prop	perty (include # of d		commercial	unit at first	level.
7.	Permit applied for in the following Zoning	accordance with	Article 5 Article 11	7.13 change	of use to M	/lixed use
			section(s)	title(s)		
8.	Please attach a stater understanding the per	ment that describes mits you request. In	your project and pr	ovide any addition	nal informat ould be gran	tion that may aid the ARI sted the requested permissi
pa	e are proposing to build a rking spaces located in the ve 3 bedrooms and sepa	ne back at grade. The	re will be three reside	ntial stories above.	Each resident	pprox 1250sf and there will be ce will be approx 1700sf and the residential units.
The app	licant states that Key		ow, strike out the words		n t -or- purc	haser under agreemen t of
	in Arlington located a			, no unfovocable o	otion has bo	en taken by the Zoning Bo
		18.00				it expressly agrees to com
				7		law or by the Redevelopm
	hould the permit be gra	- T	out apon and point			o. o,
K	mpy					
Signature o	of Applicant(s)			<u></u>		
508	Groton Rd		Westford MA	978-8	08-6621	
Address				Phone		7/08



Town of Arlington Redevelopment Board Application for Special Permit in accordance with Environmental Design Review (Section 11.06)

Required Submittals Checklist

File each in triplicate except for model References are to Arlington Zoning Bylaw

Х	Dimensional and Parking Information Form	
Х	Site plan of proposal (Section 10.11(c))	
	Model, if required (Section 11.06(d)(1))	
	Drawing of existing conditions (Section 11.06(d)(3))	
Х	Drawing of proposed structure (Section (d)(3))	
х	Proposed landscaping. May be incorporated into site plan	(Section11.06(d)(3))
X	Photographs (Section 11.06(d)(4))	
X	Impact statement (Section 11.06(d)(6))	
	Application and plans for sign permits (Section 11.06(d)(6	5))
FOR (OFFICE USE ONLY	
	Special Permit Granted	Date:
	Received evidence of filing with Registry of Deeds	Date:
<u> </u>	Notified Building Inspector of Special Permit filing	Date:

TOWN OF ARLINGTON REDEVELOPMENT BOARD

Petition for Special Permit under Environmental Design Review (see Section 11.06 of the Arlington Zoning Bylaw for Applicability)

For projects subject to Environmental Design Review, (see section 11.06(b)), please submit a statement that completely describes your proposal, and addresses each of the following standards.

- Preservation of Landscape. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing
 tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed
 areas.
- 2. Relation of Buildings to Environment. Proposed development shall be related harmoniously to the terrain and to the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. The Arlington Redevelopment Board may require a modification in massing so as to reduce the effect of shadows on abutting property in an R0, R1 or R2 district or on public open space.
- 3. Open Space. All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance.
- 4. Circulation. With respect to vehicular, pedestrian and bicycle circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of vehicle parking and bicycle parking areas, including bicycle parking spaces required by Setion 8.13 that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.
- 5. Surface Water Drainage. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Available Best Management Practices for the site should be employed, and include site planning to minimize impervious surface and reduce clearing and re-grading. Best Management Practices may include erosion control and storm water treatment by means of swales, filters, plantings, roof gardens, native vegetation, and leaching catch basins. Storm water should be treated at least minimally on the development site; that which cannot be handled on site shall be removed from all roofs, canopies, paved and pooling areas and carried away in an underground drainage system. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas.

In accordance with Section 10.11, b, the Board may require from any applicant, after consultation with the Director of Public Works, security satisfactory to the Board to insure the maintenance of all storm water facilities such as catch basins, leaching catch basins, detention basins, swales, etc. within the site. The Board may use funds provided by such security to conduct maintenance that the applicant fails to do. The Board may adjust in its sole discretion the amount and type of financial security such that it is satisfied that the amount is sufficient to provide for the future maintenance needs.

- Utility Service. Electric, telephone, cable TV and other such lines and equipment shall be underground. The proposed
 method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated.
- 7. Advertising Features. The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the use and enjoyment of proposed buildings and structures and the surrounding properties.

3

5 of 113

TOWN OF ARLINGTON

Distance to Nearest Building

Dimensional and Parking Information for Application to
The Arlington Redevelopment Board

The Arlington Redevelopment B	Board			Docket No
Property Location87-89 B	roadway			Zoning District B-4
Owner: Kevin Flynn		Address:	508 Groton Re	d Westford MA
Present Use/Occupancy: No. o vacant lot	f Dwelling Un	its:	Uses and the	eir gross square feet:
Proposed Use/Occupancy: No. Mixed use- 3 residential units w			Uses and the 8,848sf	eir gross square feet:
	557	Present Conditions	Proposed Conditions	Min. or Max. Required by Zoning for Proposed Use
Lot Size		6,004sf	6,004sf	min.
Frontage		67.85'	67.85'	50'-0" min.
Floor Area Ratio		0	1.47	_{max.} 1.5
Lot Coverage (%) (where applicable)			n/a	max.
Lot Area per Dwelling Unit (square feet)			n/a	min.
Front Yard Depth (Ft.)			3'-0"	min. 0
Side Yard Width (Ft.)	right side		6'-5"	min. 0
Sec. 14 (1997) 11 11 11 11 11 11 11 11 11 11 11 11 11	left side		23'-4"	min. 0
Rear Yard Depth (Ft.)			17'-0"	min. 17'-0"
Height				min.
Stories			4	stories 4
Feet			42'-4"	feet 50'-0"
Open Space (% of G.F.A.)				min.
Landscaped (s.f.)			n/a	(s.f.) 0
Usable (s.f.)			n/a	(s.f.) 0
Parking Spaces (No.)			6	min. 6
Parking Area Setbacks (Ft.) (where applicable)			7'-7"	min. 5'-0"
Loading Spaces (No.)			n/a	min.
Type of Construction			IIIB	

15' +/-

min.



10/12/17

Environmental Design Review-Impact Statement for 87-89 Broadway, Arlington.

1) Preservation of landscape.

The existing site is completely undeveloped and was paved with impermeable asphalt until recently. Our proposal aims to introduce planted areas (greenspace) to the rear of the property and along the eastern side. We are proposing to add a row of coniferous trees/shrubs between the access drive and the child care center at 93 Broadway on the west side. The site is flat and our proposal will not substantially change the topography.

2) Relation of Buildings to Environment.

The existing site is undeveloped and until recently was devoted to automobile storage. Our proposal aims to infill an empty gap along a busy commercial corridor. We have designed a building which draws on adjacent structures for precedent. The first floor commercial space has been brought close to the front property line along Broadway so that it reinforces the street edge and aligns with the first floor spaces of the child care center next door. The upper levels step back in relation to the triple deckers to the east and are similarly wrapped with porches overlooking the streetscape.

3) Open Space.

The proposed plan has dedicated greenspace in the rear and along the east side of the property. We will have fencing installed as a buffer between these residential neighbors. The front portion of the west side will have a row of coniferous trees/shrubs to buffer the driveway from the child care parking areas. This will be highly visible when travelling down Broadway.

4) Circulation.

The proposed building has three entrance points. The commercial space will be entered directly from Broadway as will the three residential units above. There is also a rear stair/entry giving access to the parking for the residential units.

The parking area on the site as drawn can accommodate six vehicles—2 per residential dwelling unit.

5) Surface Water Drainage.

Underground storm water recharge chambers will be located under the parking area. The gutters and downspouts will tie into this system.

6) Utility Service.

These will be underground.

Advertising Features.
 n/a

8) Special Features.

There will be an enclosed trash and recycling pen located at the rear of the property. It will be invisible and inaccessible from the street.

- Safety.
 Entrances and parking will be well lit and will be monitored with cameras.
- Heritage.
 Our project attempts to blend contextually to the adjacent buildings in type and massing.
- 11) Microclimate.

 Our proposed building use is typical for the area (residential and small commercial). We have pushed the building to the eastern side of the property in an attempt to make a light filled open space with the child care facility next door and we have lowered the floor to floor heights as much as possible to minimize shadows cast at any time of day.
- 12) Sustainable Building and Site Design.

 We will use energy star appliances and mechanical systems.

 We will use closed cell foam insulation, greatly reducing heat and cooling loads.

The proposed project is for a new 4-story mixed use building along Broadway in East Arlington. It will be situated next door to the new child care facility at 93 Broadway. On the first floor there will be a commercial space with approx. 1210sf. Large open windows will face the street and sidewalk at this level. Behind the commercial space at grade and partially tucked under the upper levels we are providing 6 parking spots for the residential units above. On each of the upper three floors, there will be a three bedroom apartment. These are approx. 1675sf in size and will have porches overlooking the streetscape below.



10/23/2017

10:47:22AM

ARLINGTON

Abutters List

Filter Used: DataProperty.UserAccount = '310306' OR DataProperty.UserAccount = '310315' OR DataProperty.UserAccount = '310324' OR DataProperty.UserAccount = '316145' OR DataProperty.UserAccount = '316154...

I HEREBY CERTIFY THAT THIS LIST HAS BEEN PREPARED IN ACCORDANCE WITH CHAPTER 40A, SEC. 11 OF M.G.L."

17 OCT 25 PM 2:27 (Ma, L. L. PLANNING & COMMUNITY

10/23/2017		ARLINGTON	NO			Page 1 of 2
10·47·22AM		Abutters	List			
ParceIID	Location	Owner	Co-Owner	Mailing Address	City	State Zip
027.0-0001-0004.0	110 -112 BROADWAY	BROADWAL INC.		291 MYSTIC AVE	MEDFORD	
027.0-0002-0001.0		CAMBOBASSO BICHABD S	האסוסם סבאן דע דסוופד	246 WAVERLEY AVENUE	WATERTOWN	
027.0-0002-0004.0	\sim	BROOKS JAMES R &	EALLON JESSICA	98 OXFORD STREET	ARLINGTON	MA 02474
027.0-0002-0023.0	w	GREAR LOUISE ANN		103 GRAFTON STREET	ARLINGTON	
027.0-0002-0024.0	105 -107 GRAFTON ST	PETERSEN ALLEN/KAPLAN DEBOI MOSKOWITZ MARC A/REBE	MOSKOWITZ MARC A/REBE		ARLINGTON	2.00
027.0-0003-0001.0	94 -98 BROADWAY	POULOS CHARLES L TR		PO BOX 283	ARLINGTON	MA 02476
027.0-0003-0002.0	90-92 BROADWAY	BARBER JAMES J		90-92 BROADWAY	ARLINGTON	
027.0-0003-0003.0	88 - A BROADWAY	CHU BELINDA			ARLINGTON	
027.0-0003-0004.0	å	MAHONEY PATRICK J & KATHLEEI	TRS/ MAHONEY F		DERRY	
027.0-0003-0005.0	80 BROADWAY	DI PERRI JANE A TR	80 BROADWAY REALTY TR	21 WELLINGTON ROAD	WINCHESTER	MA 01890
027.0-0003-0007.0	76-78 WINTER ST	ZAGANJORI HAKI & FERIDA TRUS	ZAGFAM REALTY TRUST	2 SHAWNEE ROAD	ARLINGTON	
027.0-0003-0008.0	72-74 WINTER ST	STANZIANI PAULA		94 MERRYMOUNT ROAD	QUINCY	
027.0-0003-0009.0	68 WINTER ST	PAYNTER PATRICIA M			ARLINGTON	MA 02474
027.0-0003-0017.0		BLANCIFORTI RUTH/TRUSTEE	BLANCIFORTI FAMILY TRUS		ARLINGTON	-
027.0-0003-0018.0	100 OKEORD ST	MEIZ CONA V		99 OXFORD STREET	ARLINGTON	MA 02474
027.0-0004-0001.0	2	TOULOPOULOS JOHN W/TRS -ET/	TOULOPOULOS PAMELA J	931 MASS AVENUE	ARLINGTON	
027.0-0004-0028.0		TOULOPOULOS JOHN W TRS-ETA	TOULOPOULOS	931 MASS AVE	ARLINGTON	
027.A-0004-0069.0	69 -71 WINTER ST 1	TAWFIK JONATHAN A & MONICA I		69-71 WINTER ST UNIT 1	ARLINGTON	MA 02474
027.A-0004-0071.0	69-71 WINTER ST 2	SMITH CRAIG H			ARLINGTON	
035.0-0001-0001.0	9-1/ HEALT RU	STERN NAVDA I	JOHNSON ARTHUR W REAL	3247 BRENEORD BLACE LAND OLAR	ARLINGION	MA 024/6
035.0-0001-0018.0	69 BROADWAY	MARINO PAUL J/P AULINE	TRS/PTM REALTY TRUST	P.O. BOX 85	WINCHESTER	
035.0-0001-0020.0	75-77 BROADWAY	TOKADJIAN SALPHIE T & PANOS		75 BROADWAY	ARLINGTON	
035.0-0002-0001.0	93 BROADWAY	93 BROADWAY ARLINGTON LLC			WESTFORD	MA 01886
035.0-0002-0003.A	19-27 NORTH UNION ST	JOHNSON ARTHUR W TR	JOHNSON ARTHUR W REAL		ARLINGTON	
035.0-0002-0009.A	35 NORTH UNION ST	ANDREWS GREGORY L &	HOWLETT NATALIE M	35 NORTH UNION ST	ARLINGTON	
035.0-0002-0033.0	ს	GETACHEW DAWIT K		40 HILTON ST	ARLINGTON	
035.0-0002-0034.0	4 5	MANFREDONIA GIULIO	TDI ICTEES/MID	32 HILTON STREET	ARLINGTON	MA 02474
035.0-0002-0033.0	79 -A BROADWAY	JOHNSON SANDRA & RICHARD	TRUSTEES/S & R	REALTY TI 1026 MASS AVENUE SUITE 1 ARLINGTON	ARLINGTON	MA 02476
035.0-0002-0044.0	83	BOUBOULIS JAMES & STEFANOS			ARLINGTON	
035.A-0001-0017.1	ϖ	JIAO YANG &	LIU QIZHI	67 BROADWAY UNIT 1	ARLINGTON	MA 02474
035.A-0001-0017.2		SAPKAL ATUL B & TRACY A		67 BROADWAY UNIT 2	ARLINGTON	
035.A-0001-0017.3	67 BROADWAY 3	CRAY JAMES		67 BROADWAY UNIT 3	ARLINGTON	
035.A-0001-0071.1	71 BROADWAY 1	NATHAN LANCE E & MICHELLE D		71 BROADWAY UNIT 1	ARLINGTON	
035.A-0001-0073.1		OUELLETTE MICHELLE		73 BROADWAY UNIT 1	ARLINGTON	
038.A-0001-0073.2	101 BROADWAY	BOLANON KIMON/LIBERTY	TRINTERS BOI ANOS TRIIS	370 DORCHESTER AVENUE	SOLITH BOSTON	MA 024/4
038.0-0002-0005.A	7	TOWN OF ARLINGTON-PARK			ARLINGTON	
038.0-0002-0005.C	\exists	EAST CAMBRIDGE SAVINGS BANK		292 CAMBRIDGE ST	CAMBRIDGE	5)
038.0-0002-0007.0	105 BROADWAY	EAST CAMBRIDGE SAVINGS BANK LYONS FUEL INC	•	P.O. BOX 384	ARLINGTON	MA 02141

	ParceIID Location	10:47:22AM	10/23/2017	
E	Owner	Α	AI	
End of Report	Owner Co-Owner Mailing Address City State Zip 5	Abutters List	ARLINGTON	
	Mailing Address			
	City			
	State Zip of 1	13	Page 2 of 2	













PLAN OF LAND

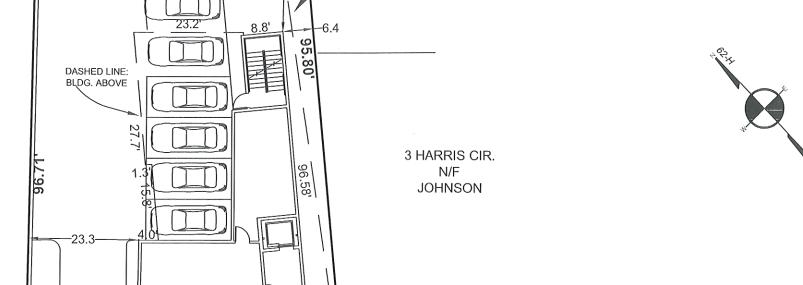
87-89 BROADWAY ARLINGTON, MA

PREPARED FOR: SPRINGBOARD SCHOOL, INC.

SCALE: 1 INCH = 20 FEET

ZONING B4: FRONT 20' SIDE 10' REAR 20" 3 HARRIS CIR. N/F JOHNSON MASSACHUSETTS
SURVEY
CONSULTANTS

14 SUMNER STREET
GLOUCESTER, MA 01930
617 899-0703
WWW.MASSACHUSETTSSURVEY.COM



LOT 20A

257+/-SF

BROADWAY (PUBLIC 64' WIDE)

67.85' 28.0'

PROPOSED BUILDING

(FIRST FLOOR) NO. 87-89

57.25'

LOT 2A 5,747+/-SF

93 BROADWAY N/F SPRINGBOARD SCHOOLS, INC.

NOTES

PROPOSED BUILDING SIZE AND LOCATION ON LOT TAKEN FROM PLANS DATED 10-05-2017 BY BROWN FENOLLOSA ARCHITECTS INC. "FIRST FLOOR PLAN"

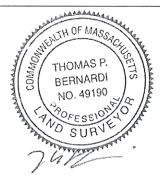
CERTIFICATION

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF SEPTEMBER 12 AND SEPTEMBER 15, 2016 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

THOMAS BERNARDI P.L.S.

DATE: OCTOBER 7, 2017



REFERENCES

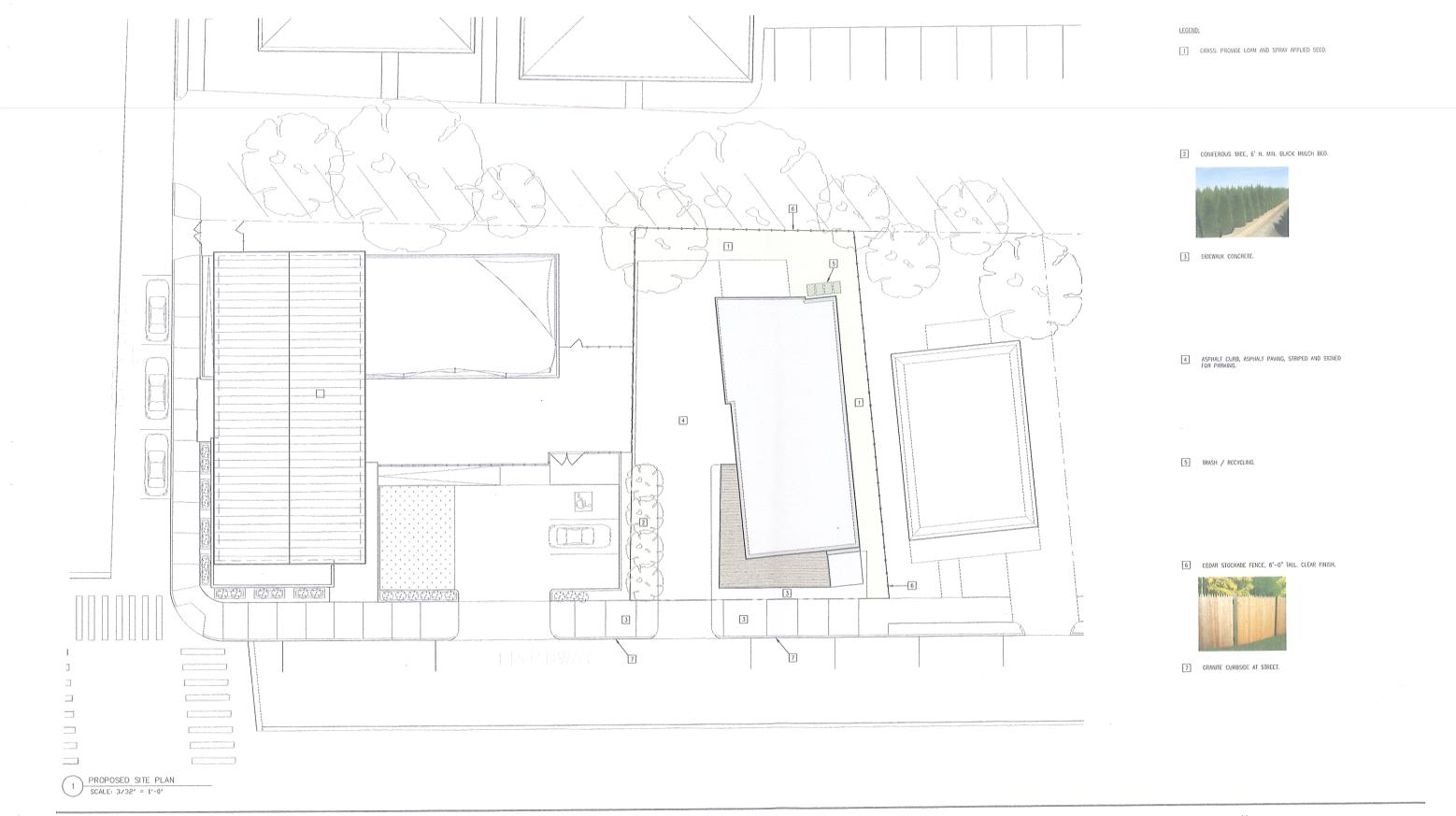
DEED: BOOK 18677, PAGE 49 PLAN: L.C.C. 62C & 62H PLAN: BOOK 7614, PAGE 388

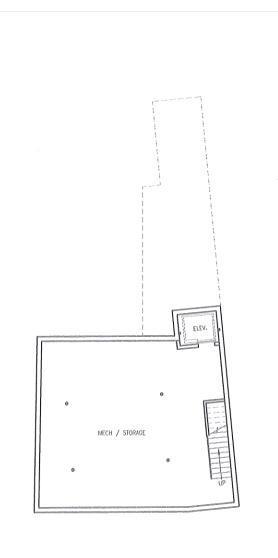
ACCORDING TO FEMA MAP 25017C0417E, DATED JUNE 4, 2010, THE EXISITING BUILDING IS LOCATED OUTSIDE THE SPECIAL FLOOD HAZARD AREA (S.F.H.A.)

14 of 113

116.15' TO

N. UNION ST.

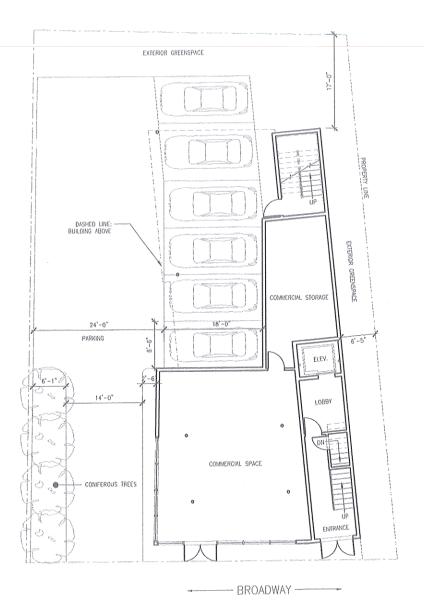




PROPOSED BASEMENT PLAN

SCALE: 1/8' = 1'-0'

BASEMENT LEVEL: 1,065 SQ FT.

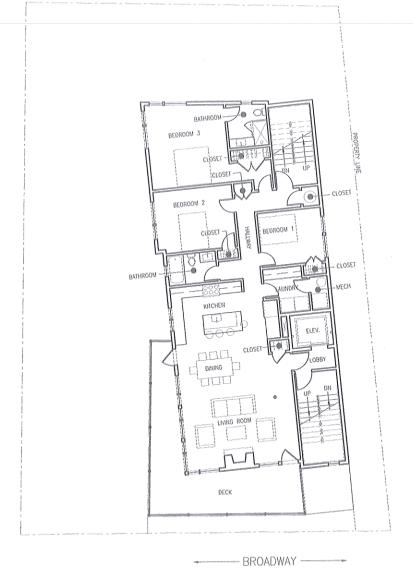


PROPOSED FIRST FLOOR PLAN

SCALE: 1/8' = 1'-0'

COMMERCIAL SPACE: 1,207 SQ FT. COMMON AREA: 447 SQ FT.

FIRST LEVEL: 1,654 SQ FT (GROSS)



3 PROPOSED PLANS: 2ND-4TH FLOORS
SCALE: 1/8' = 1'-0'

RESIDENTIAL: 1,676 SQ FT.

COMMON AREA: 367 SQ FT.

SECOND LEVEL: 2,043 SQ FT (GROSS)

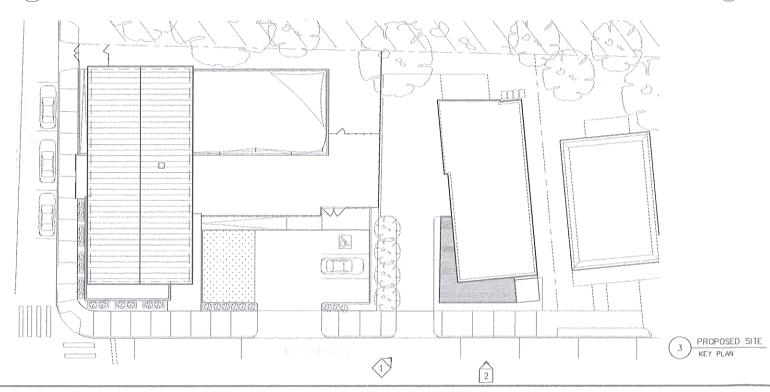








PROPOSED BUILDING
LODKING EAST





PROPOSED BUILDING
LODKING NORTHEAST







Town of Arlington, Massachusetts

Department of Planning & Community Development 730 Massachusetts Avenue, Arlington, Massachusetts 02476

Public Hearing Memorandum

The purpose of this memorandum is to provide the Arlington Redevelopment Board and public with technical information and a planning analysis to assist with the regulatory decision-making process.

To: Arlington Redevelopment Board

From: Jennifer Raitt, Secretary Ex Officio

Subject: EDR, 87-89 Broadway, Docket #3545

Date: November 6, 2017

I. <u>Docket Summary</u>

This is an application by Kevin Flynn, Springboard Schools, Inc. for a mixed-use, 4-story, 8,848 square foot building with 3 residential units (located on floors 2 through 4) and 1 commercial unit (located on the first floor). A basement would contain mechanical systems and storage space. The lot area is 6,004 square feet, in the B-4, Vehicular-Oriented Business District. Each residential unit has 3 bedrooms. Six (6) parking spaces are provided in the parking lot behind the commercial space. The project needs a Special Permit to allow Mixed-Use in the B-4 zone, and under 11.06 Environmental Design Review because of its location on Broadway.

Materials submitted for consideration of this application:

Application for EDR Special Permit and Impact Statement with supporting documents, including Survey, Existing Conditions, Site Plans, Renderings, and Elevations, dated October 12, 2017

II. Application of Special Permit Criteria (Arlington Zoning Bylaw, Section 10.11)

1. <u>Section 10.11a-1</u>

The uses requested are listed in the Table of Use Regulations as a Special Permit in the district for which application is made or is so designated elsewhere in this Bylaw.

Mixed-use is allowed by Special Permit in the B-4 zone. The Board can find that this condition is met.

2. Section 10.11a-2

The requested use is essential or desirable to the public convenience or welfare.

The existing lot is vacant, and until recently, had been used for automobile repair. The proposed uses, retail and residential, are more compatible with the existing uses on Broadway, as well as in keeping with the Master Plan's vision for Broadway, which recommended increased density on underdeveloped sites. Further, the Housing Production Plan cites Broadway as a location for "advancing residential development in smart growth locations along commercial corridors that offer connectivity to amenities, transit and services". The Board can find that this condition is met.

3. Section 10.11a-3

The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.

The use will not cause undue traffic congestion or impair pedestrian safety. There is a single driveway access point on Broadway. Commercial customers will park off-street on Broadway or a neighboring street. The minimum number of required spaces are provided, i.e., 6 or 2 per residential unit. No parking is required for the commercial space. The Board can find that this condition is met.

4. Section 10.11a-4

The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety, or the general welfare.

The 3 residential units will not overload the public water, drainage or sewer system. A storm water plan is not required due to the size and location of the project, and the fact that the amount of pavement on the lot is being reduced by approximately 55%. The Board can find that this condition is met.

5. Section 10.11a-5

Any special regulations for the use, set forth in Article 11.

All such regulations are fulfilled.

6. Section 10.11a-6

The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health, morals, or welfare.

The requested use would enhance, rather than impair, the neighborhood character, and would not be a detriment. The Board can find that this condition is met.

7. Section 10.11a-7

The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.

The requested use would not cause an excess of that particular use. Rather, it would be complementary to the neighborhood's other residential and commercial uses. The Board can find that this condition is met.

III. <u>Application of Environmental Design Review Standards (Arlington Zoning</u> Bylaw, Section 11.06)

1. EDR-1 Preservation of Landscape

The landscape shall be preserved in its natural state insofar as practicable, by minimizing tree and soil removal and any grade changes shall be in keeping with the general appearance of neighboring developed areas.

The existing site was completely paved and covered with automobiles in its most recent use, leaving no natural landscape to preserve. The applicant should provide a landscape plan.

2. EDR-2 Relation of the Building to the Environment

Proposed development shall be related harmoniously to the terrain and to the use, scale and architecture of the existing buildings in the vicinity that have functional or visible relationship to the proposed buildings. The Arlington Redevelopment Board may require a modification in massing so as to reduce the effect of shadows on the abutting property in an R-1 or R-2 district or on public open space.

The proposed development is a compatible neighborhood use. Most recently the lot was used for automobile repair, and was in poor condition, covered with pavement and automobiles. The new use, which is primarily residential, includes a small commercial space that could provide services to local residents, if preferable to the previous use. The Zoning Bylaw encourages change of uses in the B-4 district from automotive to other uses, particularly mixed-use. The Board can find that this condition is met.

3. EDR-3 Open Space

All open space (landscaped and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing by the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility and facilitate maintenance.

Open space is located around portions of the site's periphery and would be seen from several vantage points by passersby and by inhabitants of adjacent uses. Coniferous vegetation would function as a buffer between the driveway entrance and the adjacent use. The Board can find that this condition is met.

4. EDR-4 Circulation

With respect to vehicular and pedestrian and bicycle circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, and arrangement of vehicle parking and bicycle parking areas, including bicycle parking spaces required by Section 8.13 that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

The proposed building's circulation is appropriately pedestrian-oriented: both the commercial space and residential units would be accessed from the sidewalk along Broadway. Parking is suitably assigned to the rear of the property. The Board can find that this condition is met.

5. EDR-5 Surface Water Drainage

Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Available Best Management Practices for the site should be employed, and include site planning to minimize impervious surface and reduce clearing and re-grading. Best Management Practices may include erosion control and stormwater treatment by means of swales, filters, plantings, roof gardens, native vegetation, and leaching catchbasins. Stormwater should be treated at least minimally on the development site; that which cannot be handled on site shall be removed from all roofs, canopies, paved and pooling areas and carried away in an underground drainage system. Surface water in all paved areas shall be collected in intervals so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved areas.

In accordance with Section 10.11,b, the Board may require from any applicant, after consultation with the Director of Public Works, security satisfactory to the Board to insure the maintenance of all stormwater facilities such as catch basins,

Docket #: 3545 87-89 Broadway Page 5 of 8

leaching catch basins, detention basins, swales, etc. within the site. The Board may use funds provided by such security to conduct maintenance that the applicant fails to do.

The Board may adjust in its sole discretion the amount and type of financial security such that it is satisfied that the amount is sufficient to provide for any future maintenance needs.

Underground stormwater recharge chambers would be used. Options for employing raingardens on peripheral open space should be considered.

6. EDR-6 Utilities Service

Electric, telephone, cable, TV, and other such lines of equipment shall be underground. The proposed method of sanitary sewage disposal and solid waste disposal from all buildings shall be indicated.

Utilities would be underground and the proposed methods of sewage and solid waste disposal are indicated. The Board can find that this condition is met.

7. EDR-7 Advertising Features

The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the use and enjoyment of proposed buildings and structures and the surrounding properties.

The proposal does not contain advertising features. The Board can find that this condition is met. Future signage for the residential and commercial space will require administrative review.

8. EDR-8 Special Features

Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

The proposal includes a 1,065 square foot basement for mechanical equipment and storage space. An enclosed trash and recycling pen would be located in the property's rear. The Board can find that this condition is met.

9. EDR-9 Safety

With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police and other emergency personnel and equipment. Insofar as practicable, all exterior spaces and interior public and semi-public spaces shall be so designed to minimize the fear and

probability of personal harm or injury by increasing the potential surveillance by neighboring residents and passersby of any accident or attempted criminal act.

The proposed use would be highly visible and accessible from the street and from adjacent properties. The use would encourage greater pedestrian-oriented activity. The Board can find that this condition is met.

10. EDR-10 Heritage

With respect to Arlington's heritage, removal or disruption of historic, traditional, or significant uses, structures or architectural elements shall be minimized insofar as practical whether these exist on the site or on adjacent properties.

The property is not located on any local or State historic property listing, and there would not be any disturbance to historically significant resources. The Board can find that this condition is met.

11. EDR-11 Microclimate

With respect to the localized climatic characteristics of a given area, any development which proposes new structures, new hard surface, ground coverage or the installation of machinery which emits heat, vapor or fumes shall endeavor to minimize insofar as practicable, any adverse impacts on light, air and water resources or on noise and temperature levels of the immediate environment.

The building would be reasonably set back from adjacent uses, and parking would be located in the rear of the property and partially underneath the structure. The Board can find that this condition is met.

12. EDR-12 Sustainable Building and Site Design

Projects are encouraged to incorporate best practices related to sustainable sites, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality. Applicants must submit a current Green Building Council Leadership in Energy and Environmental Design (LEED) checklist, appropriate to the type of development, annotated with narrative description that indicates how the LEED performance objectives will be incorporated into the project.

Energy Star appliances and mechanical systems would be used, as well as closed-cell foam insulation. Options for installing rooftop solar panels and green-roof systems should be considered. A LEED checklist will be provided.

Docket #: 3545 87-89 Broadway Page 7 of 8

IV. Conditions¹

A. General

- 1. The final plans and specifications for the site, including all buildings, signs, exterior lighting, exterior materials, and landscaping shall be subject to the approval of the Arlington Redevelopment Board. Any substantial or material deviation during construction from the approved plans and specifications is subject to the written approval of the Arlington Redevelopment Board.
- 2. The Board maintains continuing jurisdiction over this permit and may, after a duly advertised public hearing, attach other conditions or modify these conditions as it deems appropriate in order to protect the public interest and welfare.
- 3. Snow removal from all parts of the site, as well as from any abutting public sidewalks, shall be the responsibility of the owner or occupant and shall be accomplished in accordance with Town Bylaws.
- 4. Trash shall be picked up only on Monday through Friday between the hours of 7:00 am and 6:00 pm. All exterior trash and storage areas on the property, if any, shall be properly screened and maintained in accordance with Article 30 of Town Bylaws.
- 5. The Applicant shall provide a statement from the Town Engineer that all proposed utility services have adequate capacity to serve the development.
- 6. The applicant shall provide evidence that a plan for drainage and surface water removal has been reviewed and approved by the Town Engineer.

B. Special

1. All utilities serving or traversing the site (including electric, telephone, cable, and other such lines and equipment) shall be underground.

- 2. Upon installation of landscaping materials and other site improvements, the Applicant shall remain responsible for such materials and improvement and shall replace and repair as necessary to remain in compliance with the approved site plan.
- 3. Upon the issuance of the building permit the Applicant shall file with the Building Inspector and the Arlington Police Department the names and telephone numbers

¹ If the permit is granted, it is recommended that it incorporate these conditions.

Docket #: 3545 87-89 Broadway Page 8 of 8

of contact personnel who may be reached 24 hours each day during the construction period.



Town of Arlington, Massachusetts

Zoning Recodification Update

Summary:

8:30-8:40p.m. Staff and board members will provide an update on zoning recodification, upcoming

(10 mins.) community engagement, and meetings.



Town of Arlington, Massachusetts

Follow-Up from October 2, 2017 discussion regarding MGL Chapter 91

Summary:

8:40-8:50p.m. (10 mins.) Board will discuss material provided relative to MGL Chapter 91 requirements.

ATTACHMENTS:

	Туре	File Name	Description
D	Reference Material	Email_from_Lela_Shepherd_102617.pdf	Email from Lela Shepherd
D	Reference Material	BRP_WW_24- Ch.91_General_License_Certification_Form.pdf	BRP WW24-Ch.91 General License Cert. Form
D	Reference Material	BRP_WW_24-Ch.91_General_License_Certification_Instructions.pdf	BRP WW24-Ch. 91 General License Cer. Instructions
ם	Reference Material	Ch91_Requirements.pdf	Ch.91 Requirements
D	Reference Material	Planning_Authority_Summary.pdf	Planning Authority Summary

From: "Lela Shepherd" <lshepherd@town.arlington.ma.us>

To: "'Jenny Raitt'" < JRaitt@town.arlington.ma.us>

Date: 10/26/2017 06:44 PM

Subject: Planning Authority Summary

Jenny,

I've attached the summary of the Application process and the role of the Planning Authority along with a copy of the Certification Form so you can familiarize yourself with it, and its associated instructions. The more important document you want to keep handy is the Ch. 91 Requirements for South Middlesex County. This tells you exactly what allowable and not for our inland area.

Let me know if you have any questions or want something elaborated.

Also let me know if you still want to go to the 11/16 ConComm meeting.

Best,

Lela Shepherd

Environmental Planner/Conservation Agent

Planning & Community Development, Town of Arlington

p: 781-316-3012 e: lshepherd@town.arlington.ma.us

a: 730 Massachusetts Ave. (Annex), Arlington, MA 02476

Attachments:

Size: 15k

29 of 113

Content Type: File: Planning

application/vnd.openxmlformats-Authority

Summary.docx officedocument.wordprocessingml.document

File: BRP WW 24-

Ch.91 General

Content Type: application/msword License

Certification Form.doc

File: BRP WW 24-

Ch.91 General

License

Size: Content Type: application/vnd.openxmlformats-officedocument.wordprocessingml.document Certification

Instructions.docx

File: Ch. 91 Size: 284k Content Type: application/pdf Requirements.pdf



Massachusetts Department of Environmental Protection Bureau of Water Resources – Waterways Program

BRP WW 24

Chapter 91 General License Certification
Transmittal Number:

For Registry of D	eeas (Jse
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Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



Α.	Certification Information		
1.		eneral License for Coastal eneral License for Inland S	
2.	The applicable General License for my structure dated		aruotaros
	Book, Page		Name of Registry of Deeds
3.	My structure meets the eligibility requirements of:		ection 1(A) and (B) and ection 3.2 for Great Ponds rs/streams
В.	Applicant Information		
	Printed Name of Applicant		
	Mailing Address / City / State / Zip Code		
	Phone Number	Email Address	
	Printed Name of Authorized Agent (if any)	Contact Information	
	Project Street Address / City / State / Zip Code Using Section C in the Instructions, provide the following Latitude	geographic coordinates: Longitude	
	Tax Assessors Map/Parcel Number Parcel/Lot Number	Coun	ty
	Property Recorded at Registry of Deeds:	Book	Page
	Or Certificate of Title Number	Or Probate Number	
	Type of waterbody, as described on page 6 of the Instructionated (check all that apply):	ctions, the type of water boo	dy in which the project site is
	☐ Private Tidelands☐ Commonwealth Tidelands (seaward of MLW)	☐ Great Pond☐ Non-tidal Navigable	River or Stream (Inland)
	Name of the water body the project site is located on		
D.	Project Plans		
	I have attached plan(s) drawn in accordance with the loc Requirements for my coastal or inland structure (page 11		at meet the list of
	☐ Hand-drawn Plans	☐ Professional Engine	ering Plans
	Number of pages:		



Massachusetts Department of Environmental Protection

Bureau of Water Resources - Waterways Program

BRP WW 24

Chapter 91 General License Certification

Transmittal Number:

For	Registry	of Deeds	Use

E. Certification

I hereby make application for certification under the General License authorized by the Department and signed by the Governor on April 13, 2015. Upon my signature, I agree to allow the duly authorized representative of the Massachusetts Department of Environmental Protection to enter upon the premises of the project site at reasonable times for the purpose of inspection.

I hereby certify that the information submitted in this Certification and on the attached plans is true and accurate to the best of my knowledge, and is in conformance with the eligibility requirements as outlined in Section 1(A) and (B) and Section 3.2 of the General License. And, upon my signature, that I have read the General License and agree to the terms and conditions set forth therein.

I hereby certify that any change in use or structural alteration of the project described herein will require that I request recertification in accordance with 310 CMR 9.29(4)(e).

I hereby certify that I have sent the required fee to MassDEP, and have attached a copy of the completed fee calculation (Check all that apply):

	ature of Zoning Enforcement Officer	Municipality					
Printe	ed Name of Zoning Enforcement Officer / Title / Date						
	Coastal Structures only) I hereby certify that the polation of local zoning ordinances and bylaws.	project described above and in the attached plans is not					
	orized Agent's Signature (if applicable)						
Prop	erty Owner's Signature (if different from applicant)						
Appli	cant's Signature						
	pplicants, property owners, and authorized agents m e application correspondence on behalf of the applic	ust sign this page. The authorized agent may sign all ant or property owner.					
In ac	ccordance with 310 CMR 9.29(4)(c).						
A pu	blic notice was published on Date	Name of publication					
	☐ Landowner (if not applicant) ☐ Zoning Enforcement Officer (for Coastal Structures only)						
	Board of Selectmen ☐ Mayor and City Council ☐ Harbormaster						
	Conservation Commission: if approved, identify	Date of Order or Determination DEP File #, if issued					
	Planning Board Notification Date						
	eby certify I have submitted this certification, and pro als for the municipality in which the project is located						
	Tideland Occupation Fee	☐ Great Pond Occupation Fee					
	Ch.91 Applicant Fee						
	diation (Oneck all that apply).						

Failure to record this Certification within 60 days of the date of approval will render this Certification void.

General License Plan Template

General License Certification No. Approved by Department of Environ Date:	mental Protection	For F	egistry of Deeds Use Only
This plan conforms to the	Plan accor	mpanying	Project Description:
requirements of the <u>Deed Indexing Standards for the</u> <u>Commonwealth of Massachusetts</u> –	petitio	on of: 	In:
January 1, 2008, Section 6-4: Plans as Attachments to Other Documents.			At: County of: Sheet of Date:



Massachusetts Department of Environmental Protection Bureau of Resource Protection - Waterways Program BRP WW 24 Chapter 91 General License Certification Instructions and Supporting Materials

TABLE OF CONTENTS

Key Features of the General License Certification: Eligibility Requirements	Pages 1-3
Term of License, License Fee, MassDEP Transmittal Number	Pages 3-4
How to Fill out BRP WW24	Pages 5-9
What to Do after the Receipt of the Approved and Stamp GL Certification	Page 10
Requirements and Examples for the Structure's Hand-Drawn/Engineering Plan	Pages 11-13
Certification Completeness Checklist	Page 14

Special Note: Inland Structures that do not need a Chapter 91 License.

If you have a small inland residential dock pier, or similar water-dependent structure that is not on the <u>Great Pond</u> list you do not need a Chapter 91 License. Other small residential water-dependent structures may be eligible for a Chapter 91 General License. If you are uncertain - contact MassDEP Waterways Staff for help: 617-292-5929 or email at DEP.Waterways@massmail.state.ma.us.

I. Summary of the Key Features of the General License Certification

Projects Eligible for a General License

The General License Certification offers **owners of small residential docks, piers, and similar water-dependent structures** a streamlined permit option that is easier, faster and less expensive than other Chapter 91 license processes. These structures also must meet the eligibility criteria described below.

What is the difference between the General License (GL) vs. the General License Certification (GLC)?

The Chapter 91 General Licenses are approvals that MassDEP created especially for eligible owners of small residential docks, piers, and similar water-dependent structures.

The hard copy **signed original** of each **General License (GL)** can be found in every Registry of Deeds (Registry) in Massachusetts. These General Licenses describe the eligibility requirements and the conditions, including construction standards and setback requirements that must be met to qualify for the License. Each General License has a unique Book and Page number at each Registry of Deeds. This Book and Page number specifies whether the General License is for a coastal or inland structure.

A **General License Certification (GLC)** is a self-certification form that an owner/applicant of a small water-dependent structure submits to MassDEP to verify that they qualify for a General License. Structures must meet all of the eligibility requirements and conditions required to build their coastal or inland structure. The GLC has two parts: 1) a double-sided certification form with a site plan template that the owner of the structure completes and submits for MassDEP review. In completing the GLC an applicant should clearly identify which Registry of Deeds applies to the location of the structure. Then the applicant must refer to MassDEP's General License (GL) webpage to obtain the Registry Book and Page Number, the issuance date and view a copy of their specific GL to confirm the waterways structure conforms to the conditions of the GL. 2) Coastal or Inland Fee Calculator – A printed Fee Calculator is an essential part of a complete GLC application. Print the completed calculator and submit with your certification form and plan.

MassDEP's Waterways staff will review the GLC submitted, and if the structures meet the GL criteria, MassDEP will then affirm the certificate, stamp and sign it and then send the stamped certificate back to the applicant. The applicant must record the affirmed GLC in the appropriate Registry of Deeds within 60 Days of the issuance date and notify MassDEP within 30 days of recording the GLC. Failure to record by this deadline will invalidate the GLC.

34 of 113



Massachusetts Department of Environmental Protection Bureau of Resource Protection - Waterways Program BRP WW 24 Chapter 91 General License Certification Instructions and Supporting Materials

Who Must Obtain a General License Certification?

Certification for a General License must be submitted for all proposed structures, previously unauthorized structures, and previously licensed structures applying for renewal, that meet the eligibility criteria for a General License. This is explained in MassDEP's Waterways Regulations [310 CMR 9.29(2) and (3)]. MassDEP will process any license/permit application that has already been submitted. However, any new application that is eligible for a GLC submitted after September 1, 2017 must use the General License Certification.

Small Water-Dependent Projects that are Eligible for a General License are as follows (GL section 1(A) and (B) and section 3.2):

ONLY non-commercial, water-dependent uses that are accessory to residential property;

ONLY for pile-supported structures and associated ramps and floats:

_		
[□ N	IOT located in a Designated Port Area (DPA);
[_ N	IOT located in an Area of Critical Environmental Concern (ACEC);
[_ N	lo dredging or filling is associated with this project;
[One small structure is allowed: It must be the only structure authorized for a General License on the specific parcel (under M.G.L. c. 91, § 18C, and 310 CMR 9.29);
[lo roofed structures or other superstructures on or over any portion of the approved structure; and
[Public trust rights held by the Commonwealth to use tidelands for lawful purposes must be preserved; and
] s	The public rights of access on private tidelands for fishing, fowling and navigation are also preserved. The portion of the Inland Structure that is over the water should be no more than a total combined size of 300 square feet with a maximum width of 4 feet, excluding the piles.
		The portion of the Coastal Structure that is seaward of mean high water should be no more than the otal combined size of 600 square feet with a maximum width of 4 feet, excluding the piles.
	ıc	otal combined cize of coc equals feet man a maximum main or freed, excitating the phoef
Туре		Structures <u>ineligible</u> for a General License are those that:
	es of Are c	Structures <u>ineligible</u> for a General License are those that: commercial marinas, large-scale docks, piers, or similar structures that exceed the minimum size
	es of Are c	Structures <u>ineligible</u> for a General License are those that:
	es of Are c neces	Structures ineligible for a General License are those that: commercial marinas, large-scale docks, piers, or similar structures that exceed the minimum size ssary to achieve the intended water-dependent use or for safe berthing. For inland structures this is over the combined size of 300 square feet and a maximum width of 4
	es of Are coneces	Structures ineligible for a General License are those that: commercial marinas, large-scale docks, piers, or similar structures that exceed the minimum size ssary to achieve the intended water-dependent use or for safe berthing. For inland structures this is over the combined size of 300 square feet and a maximum width of 4 feet over the water. For coastal structures this is over the combined size seaward of mean high water of 600 square feet and a maximum width of 4 feet, excluding piles. mpair the lines of sight necessary for navigation;
	es of Are coneces In	Structures ineligible for a General License are those that: commercial marinas, large-scale docks, piers, or similar structures that exceed the minimum size ssary to achieve the intended water-dependent use or for safe berthing. For inland structures this is over the combined size of 300 square feet and a maximum width of 4 feet over the water. For coastal structures this is over the combined size seaward of mean high water of 600 square feet and a maximum width of 4 feet, excluding piles.
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] 1 1 2 2	es of Are coneces in the coneces In the coneces Ire are	Structures ineligible for a General License are those that: commercial marinas, large-scale docks, piers, or similar structures that exceed the minimum size ssary to achieve the intended water-dependent use or for safe berthing. For inland structures this is over the combined size of 300 square feet and a maximum width of 4 feet over the water. For coastal structures this is over the combined size seaward of mean high water of 600 square feet and a maximum width of 4 feet, excluding piles. Impair the lines of sight necessary for navigation; interfere with access to adjoining areas by extending substantially beyond the projection of existing structures adjacent to the site; interfere with access or public rights associated with a public landing, easement, or other public
	es of Are coneces In Ir Ir G Ir	Structures ineligible for a General License are those that: commercial marinas, large-scale docks, piers, or similar structures that exceed the minimum size ssary to achieve the intended water-dependent use or for safe berthing. For inland structures this is over the combined size of 300 square feet and a maximum width of 4 feet over the water. For coastal structures this is over the combined size seaward of mean high water of 600 square feet and a maximum width of 4 feet, excluding piles. Impair the lines of sight necessary for navigation; Interfere with access to adjoining areas by extending substantially beyond the projection of existing structures adjacent to the site; Interfere with access or public rights associated with a public landing, easement, or other public access to water;

Local board/authority review is still required BEFORE MassDEP's review: The GLC always comes **after** the local review of your project. You may use the checklist under "Notification Instructions" to ensure that you have not missed any required local review. Note that a <u>wetlands permit or negative determination</u> from your conservation commission is required before you submit your GLC. MassDEP reviews the GLC **after** the completion of the public comment period or the expiration of the planning board's 45-day review period. MassDEP's GLC review will take no longer than 60 days from the close of the public comment period.

Other Permit Options: If you have existing structure(s) that are NOT eligible for a General License, you may apply for:

• Simplified License (310 CMR 9.10)

35 of 113



Massachusetts Department of Environmental Protection Bureau of Resource Protection - Waterways Program BRP WW 24 Chapter 91 General License Certification Instructions and Supporting Materials

- Standard License WW01 (310 CMR 9.11)
- Harbormaster Approval (310 CMR 9.07) (Local Permitting Program if it is available)

Renewing Your General License Certification

MassDEP plans to renew the General Licenses before their expiration dates. If you have a Chapter 91 General License certificate for a small water-dependent structure whose term is ready to expire, you may renew your GL Certificate as outlined in 310 CMR 9.29(5).

II. Term of License, License Fee, MassDEP Transmittal Number

MassDEP's fee calculator, which is in Microsoft Excel format, **must** be used to determine the total cost of your fee and the term length (total number of years) of your license. The fee and the term length for the GLs differ for coastal and inland structures. Select the appropriate fee calculator for your project: 1) <u>Coastal Structures</u> 2) <u>Inland Structures</u>. Print and attach the copy of your calculation from the appropriate Inland or Coastal fee calculator to verify and document that your Fee Payment is correct. If you cannot use the fee calculator, or need assistance, contact a Chapter 91 Waterways staff who will assist you: 617-292-5929 or send an email to: DEP.Waterways@massmail.state.ma.us.

The Terms and Fees for the General License Certification is summarized below to explain how the fee is calculated

- 1. Determining the General License (GL) Certification Term and Expiration date
 - All Coastal structures' General License Certifications expire on April 13, 2045.
 - All Inland structures' General License Certifications expire April 13, 2030.

If you need information on how to recertify and/or transfer a GL certification see Page 10 below.

- Transmittal number and Inland or Coastal Fee Calculator Form. You must obtain a MassDEP
 <u>Transmittal Number</u>. Go to MassDEP's webpage and click "Step 1" to get your unique seven characters
 Transmittal Number. Write your Transmittal Number in the space provided in both your self-certification
 (GLC) and the appropriate Inland or Coastal Fee Calculator sheet. You do not need to complete the
 Transmittal Form for Application and Payment (Steps 3 and 4 on the webpage).
- 3. The mandatory baseline General License Certification processing fee is \$75. Additional occupation fees or tidewater displacement fees may apply.
- 4. Fees for Coastal Structures include the processing fee, tidewater displacement fee and occupation fee:
 - a. Tidewater Displacement Fee

The tidewater displacement is the fee for the net amount of tidewater that is displaced between the elevations of the high and low water marks. This is based on the volume of displacement at the rate of \$2.00 per cubic yard. (Note: the volume is rounded to nearest cubic yard).

Displacement = (Cross-Sectional area of each pile) x (Number of Piles) x (tidal range between t high and low water mark) = Cubic Yards	
Displacement Fee: \$2.00/cubic yard x cubic yards = \$	
	36 of 113



b. Commonwealth Tideland Occupation Fee

Area (square yards) x (\$1.00/square yard) x (years of license term) = \$____

Commonwealth Tideland Occupation Fee:

The Commonwealth Tideland Occupation fee is similar to paying a long-term lease for the use of space on state-owned land. This fee is for any activity in, on or over any state land for occupying these lands. Commonwealth Tideland Occupation fees are determined by the length and width of the structure seaward of low water and are calculated at \$1.00 per square yard multiplied by the license term. The area should be rounded to the nearest tenth of a square yard.

Combine the Tidewater Displacement, the Commonwealth Tideland Occupation and to processing fee to calculate the Total Fee to pay MassDEP. Make sure that you obtain and include your fee calculation to send to the MassDEP Lockbox.	The state of the s
Tidewater Displacement fee + Commonwealth Tideland Occupation fee = Subtor Certification Processing For	

- 5. Fees for Inland Structures include the processing fee and *may* be subject to an occupation fee as determined by the inland fee calculator:
 - a. The Commonwealth Waters Occupation Fee Structures (Piers, Ramps, Floats, Piles, Posts, other) in naturally occurring Great Ponds are assessed an occupation fee based on the length and width of each structure that extends farthest from the ordinary water mark (where the water usually is on average in a calendar year). This "occupation of space on state land" is quantified from a "bird's eye view" of the structure from above. These occupation fees are calculated at \$1.00 per square yard multiplied by the license term. The area is rounded to the nearest tenth of a square yard when calculating the Commonwealth Waters Occupation Fee.
 - b. A General License Certification is required if you have a small water-dependent structure that is on the Great Pond list* or is on a non-tidal navigable rivers and stream (see page 7 below).
 - c. Even if you have an inland structure on the Great Ponds list the structure **may** not be charged an occupation fee if the structure is on a Great Pond that was expanded as a result of a dam impoundment in the past. The **Inland fee calculator** will automatically determine this for you.
 - * If your structure is on a pond or lake that is NOT on the Great Pond list you do NOT need to get a Chapter 91 License or pay any fees.



III. How to fill out the BRP WW 24

Overview

A General License Certification (GLC) has two parts: a text document and a plan. The General License Certification form can be downloaded as a PDF or Microsoft Word document. The applicant can fill out the Word form on the computer. The PDF version should be printed and filled out by hand. Once the GLC is completed and is reviewed by the officials for the town/city where the project is located (see section E), it is affirmed/stamped by MassDEP staff and returned to the applicant to record at the Registry of Deeds for the town/city.

The Applicant should complete both pages of the General License Certification Form.

A. Certification Information

- 1. Check the appropriate box to specify whether you are applying for a coastal or inland structure
- 2. Use this <u>Registry Link</u> to help you find which Registry of Deeds is appropriate to your structure. Then go back the MassDEP's web page with the <u>Registry Table</u> that includes the Book and Page Number and the GL issuance date. Once you click the GL Page Number that pertains to your inland or coastal structure you will be able to view and print (if desired) a copy of the General License that applies to your self- certification. Add the recordation information in your certification form.
- 3. Read your General License and certify that your proposed structure meets the eligibility requirements of the General License Section 1 (A) and (B) **and in addition, read** Section 3.2, if you have an inland structure that is in a Great Pond or navigable river/stream.

B. Applicant Information

Fill in the applicant's name, address and the name of the county in which the applicant resides, based on **Section A: Certification Information**. If the applicant does not reside in Massachusetts, the applicant should fill in the name of the state preceded by "State of" instead of the county. The current landowner must be listed in Section C: Project Location.

C. Project Location

Fill in the landowner (if different from the applicant) and the address of the project site. To assist with the recordation of the GL Certification at the correct Registry of Deeds for the property, provide the following information:

Latitude/Longitude: Coordinates can be found using Google Maps by following the steps below:

- Enter the city, town, country, address, or other location for which you want to find the longitude and latitude. A red marker will be placed on the map, pinpointing the location you have entered.
- Right-click the red marker or a surrounding area and select the "What's here?" option from the context menu.
- The latitude and longitude coordinates of the location will be displayed. Click on the coordinates to display the correct format (Degrees, Minutes, Seconds).
- Enter these coordinates into the space provided in Section C of the Certification form.

Tax Assessors Map/Parcel Number: An assessor's parcel number, or APN, is a unique number assigned to parcels of property by the local tax assessor for the city or town within which the property is located. For purposes of identification and record-keeping - APNs are available in the property tax information.

Parcel/Lot Number: Deeds specify the lot by referring to a lot number and block number in a recorded plat diagram.



Property Owner Deed: Documents related to the ownership of real estate within the district are recorded at the Registry of Deeds. Recorded documents are assigned a sequential identifying number (known as the book and page number). Massachusetts is divided into 21 registry districts. Visit <u>Massachusetts Registry</u> to find out which Registry applies to your project location and locate the <u>Book and Page number</u>. Properties not listed in the Registry of Deeds should use the Certificate of Title Number or Probate Number instead.

Type of Water body: Indicate the type and name of water body where your site is located. The different types are listed below:

Commonwealth Tidelands are held in trust by the state for the public. They include all land seaward of mean low water.

Private Tidelands are considered the area between mean low and mean high tide. Even though they may be privately owned, private tidelands are subject to the Public Trust Doctrine, whereby the public retains the rights to fish, fowl and navigate in this so-called "intertidal zone.

A Great Pond is a pond having a water surface area of 10 acres or more in its natural state (prior to human alteration). Authorization is required for activities in, on, over, or under the entire area of any Great Pond, whether larger or smaller today than it was in the past. Click here for a county-by-county listing of Great Ponds in Massachusetts. If your pond/lake is NOT on the Great Pond list you do not have to submit a GL Certification.

Non-tidal Navigable Rivers and Streams

A non-tidal river or stream is a river or stream that is not affected by the actions of the ocean's tide. In Massachusetts, this includes sections of the Westfield River in West Springfield and Agawam; non-tidal portions of the Merrimack River; and the Connecticut River. This category also includes any non-tidal river or stream where public funds have been expended and which are **navigable during any season by any vessel including canoe, kayak, raft, or rowboat**. Certain specified projects not affecting navigation on non-tidal rivers and streams, however, are exempt from licensing under the provisions of 310 CMR 9.05(3)(g). Any activity that reduces the space available for navigation requires authorization.

D. Project Site Plans or Drawings

Check the box that indicates if you are submitting hand-drawn plans for your structure or professionally engineered plans. Fill in the number of pages of plans that you are submitting with the Certification form. Use the plan template on page 3 of the General License Certification Form for hand drawn plans. Examples of inland and coastal plans and plan requirements can be found at pages 11-13.



E. Certification

The applicant should check the appropriate boxes that confirm the proper local authorities have been notified of the plan to submit a General License Certification (310 CMR 9.29(4)(c)). Some notifications may require a permit, such as a Wetlands Order of Conditions, Negative Determination of Applicability, and Negative Determination of Applicability with Conditions or a Certificate of Compliance from the conservation commission before submitting this self-Certification. Contact the conservation commission before you begin completing the GLC. In addition, you should coordinate with the other appropriate municipal officials listed below and provide them with an opportunity to comment prior to submitting the Certification package to MassDEP. MassDEP staff will review the information. If approved; MassDEP will affirm and stamp the Certification.

Notification Instructions

The applicant is responsible for notifying the appropriate local boards, officials and individuals about this certification and must verify this in Section E of the Certification form. Notification is acceptable by sending a letter or a copy of the completed Certification form. Notification should include a copy of the plan. If the applicant is not the landowner, the applicant must notify the landowner. The applicant notifies the general public by publishing a Public Notice in a newspaper of general circulation in the area where the project is located.

Notify:

☐ Planning Board: The applicant must submit to the planning board a statement and plan that includes the proposed use, location, dimensions and limits and mode of work to be performed, and describes the proposed project with sufficient detail for the planning board to determine if the proposed project complies with the eligibility criteria and applicable standards and conditions of the General License. A completed GL Certification can serve as the "Statement".
Conservation Commission: The applicant should consult with the local conservation commission to determine if they need a Wetlands permit or Determination, and then provide to MassDEP adequate documentation of the Certification package that verifies that the project complies with the Wetlands Protection Act, in the form of an Order of Conditions, a negative Determination of Applicability, or Certificate of Compliance. If an Order of Conditions was issued, the applicant must provide, in Section E of the Certification Form, the date of issuance and MassDEP file number.
Zoning Enforcement Officer: In Section E of the Certification Form, the applicant shall include a certification from the local Zoning Enforcement Officer that the project complies with applicable zoning ordinances and bylaws. <i>This requirement ONLY applies to coastal structures.</i>
☐ Board of Selectmen: If the project is located in a town, the Board of Selectmen must be notified.
☐ Mayor and City Council: If the project is located in a city, the applicant must notify the Mayor and City Council.
☐ Harbormaster: The applicant must notify the local Harbormaster, where applicable.
☐ Landowner (if different from applicant). Note: The property owner's signature is required, regardless of who the applicant is.

Newspaper Public Notice Requirement

The applicant is responsible for publishing, in a newspaper of general circulation that is in the project area, a public notice that includes:

- 1) The applicant's name and address;
- 2) The project location and a description of the project; and



3) A statement that written comments will be accepted within 30 days of the submittal of this statement to the planning board.

At the same time that the applicant submits the statement to the planning board, a copy of the public notice shall be distributed to the appropriate official(s), harbormaster (if any), and the conservation commission. The notice must indicate that the proposed project is under review by the planning board.

No public hearing will be required by MassDEP for a General License Certification, nor is abutter notification required. However, the public notice of the project must be published before or at the same time that the statement is provided to the planning board and other municipal officials, and may be included in a public notice for the proposed project required by other applicable statutes or regulations, such as the Wetlands Protection Act.

The project is identified in the notice using the transmittal number which serves as the General License Certification Number. The applicant should call the newspaper publishing the notice to obtain the publication Date which must be included as part of the text for the notice. The public notice shall include the address where comments may be sent. The Public Notice template shown below can be used by the applicant.

Proof of Notification

Proof of notification is provided to MassDEP by filling out the last part of Section E of the Certification form (BRP WW 24). Check the boxes for the local authorities that apply to your project *after* they have been notified. The applicant's signature on the Certification form attests that the authorities were notified either in writing or were sent a copy of the Certification.

Public Notice Template for a General License Certification

DEPARTMENT OF ENVIRONMENTAL PROTECTION WATERWAYS REGULATION PROGRAM

Notice of Certification Application pursuant to 310 CMR 9.29 General License Certification Number
[Your Transmittal #]
[Project Name]

NOTIFICATION DATE: [Date of Publication]*

Public notice is hereby given of the application for Certification to the General License by [Applicant's name] to construct and maintain a noncommercial dock for access to navigable waters of [Name of waterbody] at [Site address of structures, City/Town, County State,].

The [municipality] Planning Board will consider all written comments on this Waterways application received within 30 days subsequent to the "Notification Date".

Additional information regarding this application may be obtained by contacting the Waterways Regulation Program at 617-292-5929 or by email at DEP.Waterways@massmail.state.ma.us. Project plans and documents for this application are on file with the Waterways Regulation Program for public viewing, by appointment only, at the address below.

Written comments must be addressed to: <u>The [municipality] Planning Board located at [insert mailing address and e-mail address of the appropriate municipal office].</u>



Joint Public Notice Template for a General License Certification and Wetlands Protection Permit Application Review

DEPARTMENT OF ENVIRONMENTAL PROTECTION WATERWAYS REGULATION PROGRAM

Notice of Certification Application pursuant to 310 CMR 9.29 General License Certification Number [Your Transmittal #] [Project Name]

NOTIFICATION DATE: [Date of Publication]*

Public notice is hereby given of the application for Certification to the General License by [Applicant's name] to construct and maintain a noncommercial dock for access to navigable waters of [Name of waterbody] at [Site address of structures, City/Town, County State,].

The [municipality] Planning Board will consider all written comments on this Waterways application received within 30 days subsequent to the "Notification Date".

Additional information regarding this application may be obtained by contacting the Waterways Regulation Program at 617-292-5929 or by email at DEP.Waterways@massmail.state.ma.us. Project plans and documents for this application are on file with the Waterways Regulation Program for public viewing, by appointment only, at the address below.

Written comments must be addressed to: The [municipality] Planning Board located at [insert mailing address and e-mail address of the appropriate municipal office].

(Name of Municipal) CONSERVATION COMMISSION

Notice of Public Hearing

Pursuant to Mass General Laws, Chapter 131, Section 40, Massachusetts Wetlands Protection Act, the (name of municipal) Conservation Commission will hold a Public Hearing on (Date) at (Time) in the (Location of Hearing) on a Notice of Intent filed by (Applicant's Name) on (brief description of work). The work falls within the (describe the wetland resource area(s) and/or 100-foot buffer zone). The application is on file and is available for public inspection in the Conservation Office at (address).

Submittal Instructions

What to send to the MassDEP's Lockbox

How to get your Transmittal Number: Go to MassDEP Transmittal Number for Permit Application & Payment and click Step 1 to get your unique seven-character Transmittal Number. Insert your Transmittal Number on the space on the top of the page in both your self-certification (GLC - BRP WW24) and on the Inland or Coastal Fee Calculator form. You do NOT need to complete the Transmittal Form for Application and Payment (Steps 3 and 4 on the webpage). Submit a copy of the GLC, a copy of the completed Inland or Coastal Fee Calculator, and a check or money order payable to: "The Commonwealth of Massachusetts, MassDEP" to the MassDEP Lockbox at:



Massachusetts Department of Environmental Protection P.O. Box 4062 Boston, MA 02211

Where to send your completed General License Certification form for MassDEP's Stamped Affirmation:

In a separate mailing send the completed originals of: 1) The General License Certification Form, 2) The hand-drawn or engineered plan of your inland or coastal structure in your GLC form (see sample plan templates and requirements on pages 11-13 for guidance), 3) The completed Inland or Coastal Fee Calculator and 4) a photocopy of your payment check or money order to:

The MassDEP Waterways Regulation Program
One Winter Street, 5th Floor
Boston, MA 02108

IV. What to Do After Receipt of the Approved and Stamped General License Certification

Certification Recordation

Once the stamped Certification is received by the applicant, both the Certification **and** plan must be recorded at the appropriate Registry of Deeds in the property's chain of title within **60 days of the date of MassDEP's issuance**.

The Licensee/applicant is required to notify in writing to MassDEP Waterways Regulation Program in Boston that the Certification is recorded. The notification should include: a) date of recordation and instrument number; and b) name of Registry of Deeds or Land Court where recordation was made. Mail the written notification to: MassDEP Waterway Regulation Program, One Winter Street, 5th floor, Boston, MA. 02108

Failure to record the Certification and accompanying plan within 60 days will void the Certification (see M.G.L. c. 91, § 18C). The Licensee/applicant must provide notification to MassDEP within 30 days of the recording in accordance with 310 CMR 9.18(2). The Certification becomes valid on the date the affirmed Certification is recorded.

Recertification and Transfer of Certification

MassDEP may reissue a General License (explained in the Waterways regulations at 310 CMR 9.29) twelve months before the expiration of the General License term. The applicant responsible for the structure with a valid Certification under the General License may file a request for continued coverage with MassDEP at least 90 days prior to the expiration of the General License, or the date of reissuance of the General License - whichever is later. Before recertification MassDEP may require planning board review if comments were received or if additional relevant information was provided to MassDEP concerning the structure.

The following procedures apply to requests to recertify a General License:

- a) Projects that meet the eligibility provisions of the Waterways regulations (in 310 CMR 9.29(2)), and had previously obtained a license, simplified license, amnesty license or interim approval, should request a Certification instead of renewal, <u>before</u> the expiration of the previously issued license or interim approval.
- b) Any person applying for a recertification must pay an occupation fee to the Commonwealth for the rights granted in such lands.
- c) Unless otherwise stated in the Certificate, a valid affirmed/stamped Certificate would automatically be transferred with the change of ownership of the property along with the chain of title. All rights, privileges, obligations, and responsibilities specified in the General License shall be transferred to the new landowner upon recording the changed ownership in the Registry of Deeds.



Requirements for your Structure's Hand-Drawn or Engineered Plan

Enclose the hand-drawn or engineering plan of the structure in the Certification form (see examples below for assistance). If space permits, the two views described below can be combined onto one page. (If available, applicants can use existing plans submitted with a <u>Notice of Intent</u> under the Wetlands Protection Act.) Drawings should include the following information:

Plan View
Drawings must be prepared on 8.5 x 11-inch paper.
☐ A 1-inch margin should be left at the top edge of each drawing for purposes of reproduction and binding. A 1/2-inch margin is required for the three other edges.
A complete title block on each drawing submitted should identify the project and contain the name of the waterway, the name of the applicant, the number of the sheet and the total number of sheets in the set, and the date the drawing was prepared.
A North Arrow shall be shown on the plan.
Locus Map - A locus map shall be included, depicting the subject property in relation to the surrounding area This may be prepared as illustrated on the Sample plan, in the upper right-hand corner, or the applicant may simply photocopy a street map as a separate sheet ("sheet 2 of 2"), circle the property, and label it.
☐ Scale – All drawings shall be in a suitable scale (e.g., 1 inch = 40 feet) and the scale should be indicated on each sheet of the plan.
☐ Property Details – Illustrate as much of the subject property as possible, including any residence, adjacent streets, property lines, and the tax assessor's information (map number).
■ Mean high and low water lines – The mean high water (MHW) and mean low water (MLW) lines must be clearly delineated. In inland waters, such as ponds, lakes and non-tidal rivers, use the terminology ordinary high water (OHW) which is the average observed high water elevation during one year as accepted by MassDEP. DO NOT use color shading because MassDEP makes copies of these plans in black and white. Use dashed or dotted lines or crosshatching to distinguish different areas where necessary. (See definitions of "High Water Mark" and "Low Water Mark" at 310 CMR 9.02).
☐ Licensed activities – All structures and/or fill that should be licensed must be clearly shown, accompanied by their dimensions. Linear distances, in feet, must be provided from the structures to each property line along the waterway.
☐ Title Block — Prepare the lower-middle and right-hand blocks as indicated on the Sample template
Profile View
☐ Profiles – Bottom and bank profiles should be delineated as accurately as possible.
☐ Mean high water (MHW) and mean low water (MLW) lines – MHW and MLW (or ordinary high and low water lines (OHW)) for inland waters must be illustrated. The elevation of MLW may be given as 0.0 ft. Elevations for MHW and all other structures should then be given relative to MLW.
☐ Licensed activities – All structures and/or fill to be licensed must be clearly depicted. Dimensions of piles, and any other structures not indicated on the first sheet(s), must be provided with the Cross-section view.
☐ Title Blocks – the lower middle and right-hand blocks shall be prepared as indicated on the GLC form's Plan

44 of 113

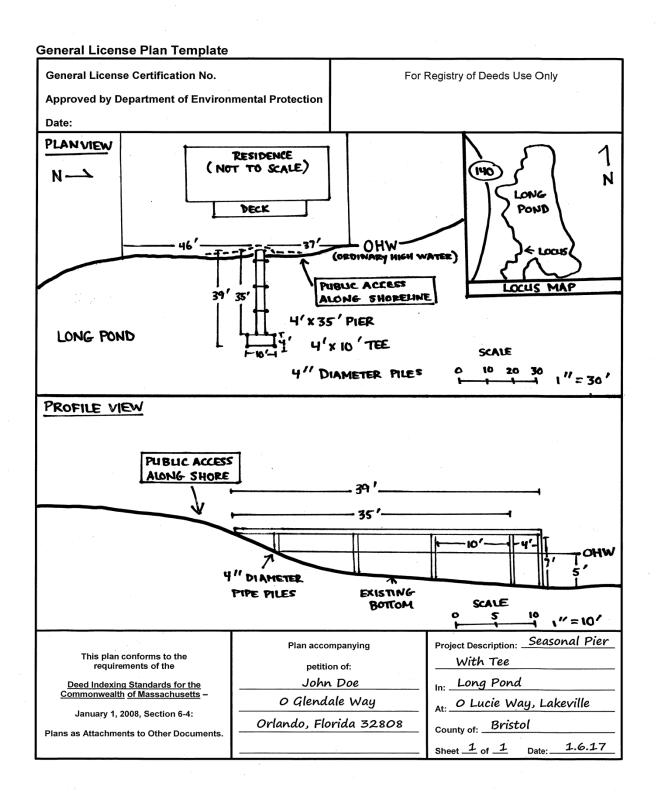
template.



Massachusetts Department of Environmental Protection Bureau of Resource Protection - Waterways Program RRP WW 24 Chapter 91 General License Certi

BRP WW 24 Chapter 91 General License Certification Instructions and Supporting Materials

General License Certification – Sample Plan for an Inland Structure

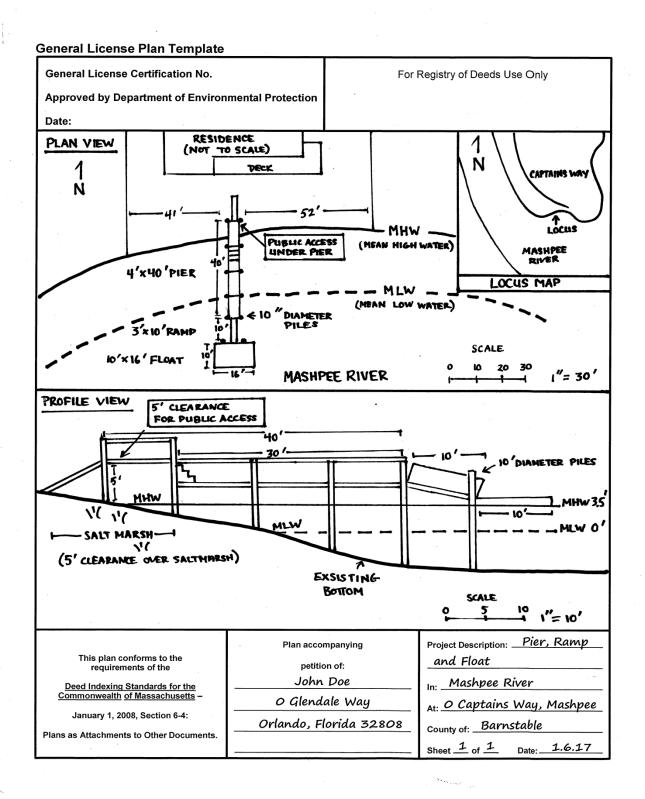




Massachusetts Department of Environmental Protection Bureau of Resource Protection - Waterways Program

BRP WW 24 Chapter 91 General License Certification Instructions and Supporting Materials

General License Certification - Sample Plan for a Coastal Structure





Certification Completeness Checklist

write "not applicable" (n/a) in that block.	eral License Certification form. If a question does not apply to your project Please print or type all information provided on the form. Use black ink additional space is needed, attach extra 8-1/2" x 11" sheets of paper.
☐ GET the MassDEP Transmittal Num	ber and insert number into your BRP WW24 and Fee Calculator Forms.
☐ PLANS: Prepared in accordance with requirements of 310 CMR 9.29(4)(a).	n the applicable instructions in this document. For initial filing, meet the
applicant. In lieu of the landowner's sign submit an application for the project site	ertification applications must be signed by "the landowner if other than the lature, the applicant may provide other evidence of legal authority to ." If the project is entirely on land owned by the Commonwealth (e.g. mosin tidelands and below the historic high water mark of Great Ponds), you owner's signature".
☐ PUBLIC NOTICE: Proof has been subbeen met (include copy of the dated new	ubmitted that the public notice requirement at 310 CMR 9.29 (4)(C) has wspaper notice).
THE CERTIFICATION FORM HAS BEE MUNICIPALITY IN WHICH THE PROJE	EN SUBMITTED TO THE FOLLOWING OFFICIALS FOR THE ECT IS LOCATED:
includes the proposed use, location, dim proposed project with sufficient detail for	I: Applicants shall submit to the planning board a statement and plan that nensions and limits and mode of work to be performed, and describes the r the planning board to determine if the proposed project complies with the ds and conditions of the General License.
the Certification package that the projec Conditions (OoC), negative or conditions	the applicant shall provide to the Department adequate documentation with the Complies with the Wetlands Protection Act, in the form of an Order of ally negative Determination of Applicability, or Certificate of Compliance ant must provide, in Section E of the Certification Form, the date of or CoC, the MassDEP file number.
	ON: In Section E of the Certification Form, the applicant shall include a cement Officer that the project complies with applicable zoning ordinances
☐ Board of Selectman	☐ Mayor and City Council ☐ Harbormaster
☐ Landowner (if not applicant)	☐ Zoning Enforcement Officer (Required for Coastal Structures ONLY)
TO SUBMIT THE PACKAGE:	
☐ Checklist items above have been co	ompleted.
	one copy from the Inland or Coastal Fee Calculator and check to: rogram, One Winter Street- 5 th floor, Boston, MA. 02108.
	ulations, copy of the GLC, and the appropriate fee of \$ as a e to: "The Commonwealth of Massachusetts", to: al Protection

The Commonwealth of Massachusetts



SMALL DOCK AND PIER GENERAL LICENSE FOR INLAND STRUCTURES

1. GENERAL

The Department hereby authorizes eligible structures, exclusively limited to noncommercial, small-scale, water-dependent docks, piers and similar structures that are accessory to residential use, in accordance with the provisions of M.G.L. c. 91, § 18C, and 310 CMR 9.29. The following standards shall apply:

(A). Eligible projects shall:

- a) Be limited exclusively to noncommercial, water-dependent uses accessory to residential property;
- b) Be limited to pile-supported structures and associated ramps and floats;
- c) Not be located in a Designated Port Area (DPA);
- d) Not be located in an Area of Critical Environmental Concern (ACEC);
- e) Include no associated dredging or filling;
- f) Be the only structure authorized by M.G.L. c. 91, § 18C, and 310 CMR 9.29 on said parcel;
- g) Include no roofed structures or other superstructures on any portion of the approved structure; and
- h) Preserve all rights held by the Commonwealth in trust for the public to use Great Ponds and navigable rivers and streams for lawful purposes

(B) Eligible projects shall not:

- a) Include commercial marinas or large-scale docks, piers, or similar structures;
- b) Exceed the minimum size necessary to achieve the intended water-dependent use:
- c) Extend beyond the length required to achieve safe berthing;
- d) Impair the lines of sight necessary for navigation;
- e) Interfere with access to adjoining areas by extending substantially beyond the projection of existing structures adjacent to the site;
- f) Interfere with access or public rights associated with a public landing, easement, or other public access to water;
- g) Generate water-borne traffic that would substantially interfere with other vessels; and

- h) Impair in any other substantial manner the ability of the public to swim or float freely upon the waterways.
- (C) Applicability. This General License authorizes structures certified under the procedures established in 310 CMR 9.29. An affirmed Certification from the Department, once recorded by the recipient ("Certificate holder") in the appropriate Registry of Deeds, shall have the effect of making this General License applicable to a particular structure.

2. LOCATIONS

This General License authorizes placement of an eligible structure for which a Certification has been submitted and affirmed pursuant to 310 CMR 9.29 on:

Great Ponds whereby the Certificate holder shall not restrict the public's right to use and to pass freely upon lands lying below the ordinary high water mark for any lawful purpose. A list of Great Ponds is available on the MassDEP website at: http://www.mass.gov/eea/agencies/massdep/water/watersheds/massachusetts-great-ponds-list.html; and/or

Navigable Rivers or Streams pursuant to 310 CMR 9.04(1)(e), whereby the Certificate holder shall not restrict the public's right to use and pass freely for any lawful purpose in the waterway.

3. CONDITIONS

1. Access

- a) In accordance with any License condition, easement, or other public right of lateral passage that exists in the area of the subject property lying within a Great Pond the Certificate holder shall allow the public in the exercise of such rights to pass freely over, under or around all structures within such area. Accordingly, the Certificate holder shall place and maintain, in good repair, a public access sign on the easterly/westerly or northerly/southerly sides of the pier, dock or similar structure authorized herein, or at each property line, adjacent to the high water shoreline. Said signs shall comply with the Department's signage guidelines and shall be posted immediately upon completion of construction. Nothing in this condition shall be construed as preventing the Certificate holder from excluding the public from portions of said structure(s) or property not intended for lateral passage.
- b) In partial compensation for the private use of structures on Great Ponds or navigable rivers and streams, which interfere with the rights of the public to use such lands, the Certificate holder shall allow the public to pass on foot, for any purpose and from dawn to dusk, within the area of the subject property lying, within 5 feet of the ordinary high water mark. This condition shall not be construed to prevent the Certificate holder from taking reasonable measures to discourage unlawful activity by users of the area intended for public passage, including but not limited to trespassing on adjacent private areas and deposit of refuse of any kind or nature in the water or on the shore. Further, the exercise by the public of free on-foot passage in accordance with this condition shall be considered a permitted use to which the limited liability provisions of M.G.L_{46·of 113}

21, § 17C, shall apply.

- 2. Eligible structures located in Great Ponds and navigable rivers and streams shall:
 - a) Be for seasonal use (i.e., the structure shall be removed on an annual basis);
 - b) Be no larger than a combined size of 300 square feet below the ordinary high water mark;
 - c) Not exceed a maximum width of 4 feet for the pile-supported portion of the structure;
 - d) Otherwise comply with the applicable provisions of this General License.
- 3. Unless otherwise expressly provided by this General License, the Certificate holder shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon. No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this General License.
- 4. Any change in use or any structural alteration of any structure by a Certificate holder shall require approved recertification in accordance with the provisions and procedures established in M.G.L. c. 91, § 18C. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure authorized herein shall render the affirmed Certification void.
- 5. An affirmed Certification for a structure under this General License may be revoked by the Department for noncompliance with the terms and conditions set forth herein. The affirmed Certification may be revoked after the Department has given written notice of the alleged noncompliance to the Certificate holder and those persons who have filed a written request for such notice with the Department, and afforded a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render the affirmed Certification void. The Commonwealth may then proceed to remove or cause removal of said structure at the expense of the Certificate holder, its successors and assigns as an unauthorized and unlawful structure.
- 6. All structures certified under this General License shall be maintained in good repair and in accordance with the terms and conditions stated herein.
- 7. Nothing in this General License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Certificate holder, except with the written consent of the owner(s) thereof.
- 8. This Waterways General License, and all affirmed Certifications of coverage thereunder are granted subject to all applicable federal, state, county, and municipal laws, ordinances and regulations, including but not limited to a valid final Order of Conditions issued pursuant to M.G.L. c. 131, § 40, the Wetlands Protection Act.

9a. The project shall not significantly interfere with littoral or riparian property owners' rights to access and egress their property from the waterway. Wherever feasible, all structures shall be placed perpendicular to the shoreline. Structures located in Great Ponds and navigable rivers and streams shall be setback wherever feasible at least 25 feet from abutting property lines. In no event shall a structure on fresh water be placed closer than 15 feet to an abutting property line.

9b. Structures shall not extend beyond the length required to achieve Safe Berthing. Safe Berthing is defined herein as assuring minimum water depths of 18 inches. In areas with documented shellfish resources, said minimum Safe Berthing depth shall be no less than 30 inches. In no case shall the structure's length extend more than one fourth of the way across a water body. The structure shall otherwise conform to all other dimensional requirements stated herein.

9c. When removed, all seasonal structures shall be stored outside of wetland resources as defined in 310 CMR 10.00, except for bordering land subject to flooding in accordance with 310 CMR 10.57 and land coastal storm flowage in accordance with 310 CMR 10.04. Said storage shall be in conformance with any applicable local, state or federal requirements.

9d. All work authorized by an affirmed Certification under this General License shall be completed within 5 years of the date of the Department's affirmation. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Applicant submits to the Department, 30 days prior to the expiration of said construction period, a written request to extend the period and provides an adequate justification for said extension.

9e. In order to maintain lateral public access at least a 10-foot section of the fixed pier at mean high water shall be elevated between pilings to provide a minimum clearance of 5 feet as measured from the ground to the bottom of the lowest stringer. In the alternative, stairs may be provided on either side of the pier at mean high water for public access up and over the structure. Any cross-bracing of piles shall be set parallel to the mean high water mark to maintain lateral public access in at least a 10-foot section at mean high water.

4. COMPLIANCE

- 4.1 This General License shall be void unless it is recorded by the Department in every Registry of Deeds in the Commonwealth upon issuance, indexed under "Commonwealth of Massachusetts" as the Grantor. An affirmed Certification issued under this General License shall be void unless it and its accompanying plans are recorded within 60 days from the date of the Department's acknowledgement, in the Registry of Deeds for the County where the structure is located. The Certificate holder shall provide notification to the Department within 30 days of the recording in accordance with 310 CMR 9.18(2). Work or change in use shall not commence until the affirmed Certification is recorded and the Department has received notification of the recordation.
- 4.2 Submission of a Certification under the provisions of 310 CMR 9.29 to be covered by this General License and recording of an affirmed Certificate in the Registry of Deeds shall constitute an agreement by the Certificate holder to conform with all terms and 51 of 113

conditions stated herein. All affirmed Certifications are issued with the express condition that any and all other applicable authorizations required shall be secured by the Certificate holder <u>prior</u> to the commencement of any activity or use authorized pursuant to this General License.

4.3 The enforcement provisions of 310 CMR 9.08 shall apply to any structure eligible for certification or Certified under the General License pursuant to 310 CMR 9.29. The Department shall perform annual audits to monitor compliance with the General License standards and conditions in accordance with M.G.L. c. 91 § 18C. Consistent with the provisions of 310 CMR 9.26, the Department may revoke a Certification for non-compliance with the standards and conditions set forth in the General License or individual Certification.

5. FEES

No Certificate under this General License shall be affirmed by the Department unless and until all applicable fees have been paid.

6. LICENSE TERM

This General License for projects located in Great Ponds and navigable rivers and streams shall have a term of 15 years from [DATE OF ISSUANCE]. The length of term for an individual Certification will vary depending on the date the Certification is affirmed by the Department. All Certifications affirmed under this General License shall expire on [EXPIRATION DATE], unless a shorter term is specified by the Department in its affirmation of the Certification, and may be recertified in accordance with 310 CMR 9.29(7).

IN WITNESS WHEREAS, said Department of Environment	ronmental Protection have
Section Chief	
Division Director	Department of Environmental Protection
Commissioner	
Commonwealth of Massachu Middlesex (Southern District), ss.	setts
On this	Frank Taormina, Notary Public My Commission Expires April 4, 2019
This license is approved in consideration of the Commonwealth the tidewater displacem	
the amount determined by the Governor as a just a privileges hereby granted in the land of the Commonwe	
	BOSTON,
Approved by the Governor.	Clarky D Ball
	Governor

Ch.91 Planning Authority Responsibilities

*The Registry of Deeds already has a General License on file for properties that qualify, an applicant simply has to go through the self-certification process, completing the Certification Completion Checklist to show that they qualify, and the License is eventually released to them.

Application Process (simplified):

- 1. Applicant downloads and completes Ch.91 General License Self-Certification Form.
- 2. Applicant posts a public notice of their proposed action and submits statement to Planning Authority.
- 3. Planning Authority (Director of Planning as ARB Representative) reviews documentation to ensure everything is filled out properly and that all zoning requirements (abutter buffers, setbacks, etc.) are met.
- 4. Planning Authority either approves the project to move forward to the ConComm (by signing off on the Applicant's Certification) OR sends a written recommendation to the DEP within 45 days, stating that the project does not meet requirements or is not applicable for the General License. Should use the following language: "The proposed action is in violation of local zoning ordinances and by-laws". Not sending a letter signifies approval of the project.
- 5. If the project meets requirements, the Applicant requests to be placed on the ConComm agenda. The Applicant does not need to file a separate NOI or RDA.
- The ConComm reviews the Self-Certification form for compliance with the Town Wetlands
 Protection Bylaws and Regulations; the ConComm issues either an Order of Conditions or A
 Determination of Applicability.
- 7. The Applicant sends Certification to DEP and pays fees.
- 8. DEP affirms the Certificate and issues the General License 60 days after the close of the Public Comment period.
- 9. The Applicant is responsible for recording the certification with the Registry of Deeds (within 60 days) and submitting proof of recordation to DEP (within 30 days). The Applicant then has 5 years to construct the structure or will need to recertify.



Town of Arlington, Massachusetts

Conservation Commission Regulations for Wetlands Protections - proposed revisions

Summary:

8:50-9:05p.m. Board will discuss new correspondence from the Conservation Commission regarding new proposed revisions to the Conservation Commission's regulations and next steps.

ATTACHMENTS:

	Туре	File Name	Description
D	Reference Material	Email_from_Nathaniel_Stevens_110717.pdf	Email from Nathanial Stevens
D	Reference Material	11092017_Email-draft_of_regs.pdf	11092017 Email from Nathanial Stevens
D	Reference Material	Regs_2017-11-09-DRAFT_(2).pdf	DRAFT-Wetland Regulations
ם	Reference Material	Regs_2017-11-09-Climate_Change _DRAFT_(2).pdf	Climate Change Language

From: Nathaniel Stevens < NStevens@McGregorLaw.com>

To: Jenny Raitt <JRaitt@town.arlington.ma.us>

Lela Shepherd <lshepherd@town.arlington.ma.us>, Douglas Heim

<DHeim@town.arlington.ma.us>, Susan Chapnick <s.chapnick@comcast.net>

Date: 11/07/2017 12:52 PM

Subject: RE: Review and Approval of Revised Wetland Regulations

Sure.

This latest draft:

Eliminates the requirement to send abutter notification for an Request for Determination of Applicability via certified mail, RRR, but rather allows notice to be sent by regular mail (purpose: make an RDA filing less onerous than filing a NOI);

States the Commission can waive Bylaw filing fees for compelling reason(s) to do so;

Some further tweaks to Vegetation Replacement (Section 24);

Attempts to further simplify and clarify the standards for work in the AURA (Section 25);

Eliminates the requirement that a waiver request be filed with the NOI (allows it to be filed any time before the close of public hearing);

Eliminates the wildlife habitat provision (seems identical to that in state regs);

Will contain language about climate change resiliency/adaptation - Susan is working on language for such a new section; and

Fixes a few minor typos and formatting issues.

Please let me know if you have questions.

We look forward to comments from you, the ARB, and anyone else prior to our hearing on November 16, 2017.

Thanks,

Nathaniel

From: Jenny Raitt [mailto:JRaitt@town.arlington.ma.us]

Sent: Tuesday, November 07, 2017 12:27 PM

To: Nathaniel Stevens

Cc: Lela Shepherd; Douglas Heim; Susan Chapnick

Subject: Re: Review and Approval of Revised Wetland Regulations

Thank you, Nathaniel. Would you please summarize what changed from this draft and the previous draft the ARB reviewed and provided feedback on?

Jenny

Jennifer Raitt

Director, Department of Planning and Community Development

Town of Arlington

730 Massachusetts Avenue

Arlington, Massachusetts 02476

781-316-3092

----Original Message----

From: Nathaniel Stevens < McGregorLaw.com>

To: Jenny Raitt < <u>JRaitt@town.arlington.ma.us</u>>

Cc: Lela Shepherd <lshepherd@town.arlington.ma.us>, Douglas Heim <DHeim@town.arlington.ma.us>,

Susan Chapnick <<u>s.chapnick@comcast.net</u>>
Date: Sat, 4 Nov 2017 16:25:15 +0000

Subject: Re: Review and Approval of Revised Wetland Regulations

Hi Jenny,

Hot off the press, attached is the next draft. Any comments you or the ARB might have would be appreciated.

Also, if you know of any climate change resiliency regs (in the land use permitting context) that Susan could look at, that would be great.

I've just asked Susan whether she can provide her text by this Wednesday.

Thanks,

Nathaniel

From: Jenny Raitt

Sent: Saturday, November 4, 2017 12:01 PM

To: Nathaniel Stevens

Cc: Lela Shepherd; Douglas Heim

Subject: Re: Review and Approval of Revised Wetland Regulations

Nathaniel,

The ARB's next meeting is on 11/13. I would like to provide them with the opportunity to review this updated draft of the regulations and then give feedback to the Conservation Commission. I'm not certain this can happen by the time you anticipate their vote on 11/16. Will you be able to send the updated draft and proposed text by this Wednesday?

Thank you in advance,

Jenny

Jennifer Raitt

Director, Planning and Community Development

Town of Arlington

781-316-3092

On Nov 4, 2017, at 11:06 AM, Nathaniel Stevens < MStevens@McGregorLaw.com wrote:

Jenny and Doug,

The Commission did not yet adopt revised regulations at its meeting last Thursday but will review a revised draft and likely vote at its meeting on November 16. Susan Chapnick likely will be proposing a new section on climate change resiliancy, the text of which likely will be circulated separately from the next draft.

We would welcome your comments on the next draft (I will circulate soon) and Susan's proposed text (I'm not sure on when she will circulate it).

I hope you are each having a good weekend.

Nathaniel

From: Lela Shepherd

Sent: Wednesday, November 1, 2017 8:38 AM

To: 'Jenny Raitt'; 'Doug Heim'

Cc: Nathaniel Stevens

Subject: RE: Review and Approval of Revised Wetland Regulations

Good Morning,

Nathaniel asked me to forward the revised wetland regulations to each of you for your review, and he apologizes for the lack of review time given. The Commission intends to vote to approve these at tomorrow's meeting.

Best,

Lela Shepherd

Environmental Planner/Conservation Agent

Planning & Community Development, Town of Arlington

p: 781-316-3012 e: lshepherd@town.arlington.ma.us

a: 730 Massachusetts Ave. (Annex), Arlington, MA 02476

From: Jenny Raitt
To: Amy Quinn

Subject: Fwd: ACC - draft of regs

Date: Thursday, November 9, 2017 10:15:00 AM

Attachments: Untitled attachment 00054.html

Regs 2017-11-09-DRAFT.docx

Regs 2017-11-09-Climate Change - DRAFT.docx

Hi Amy,

Please include this email and the updated regs with the ARB agenda.

Thank you, Jenny

Jennifer Raitt Director, Planning and Community Development Town of Arlington 781-316-3092

Begin forwarded message:

From: Nathaniel Stevens < NStevens@McGregorLaw.com>

Date: November 9, 2017 at 10:11:59 AM EST

To: Nathaniel Stevens < stevens-stevensnathaniel11@gmail.com>, Curt Connors

< curtconnors@hotmail.com >, Susan Chapnick < s.chapnick@comcast.net >, "Lela

Shepherd" < LShepherd@town.arlington.ma.us>, "David E. White"

<a href="mailto:<a href="mailt

Charles" <ctirone@ci.reading.ma.us>, Mike Nonni <mike.nonni@gmail.com>,

'Douglas Heim' < dheim@town.arlington.ma.us >, 'Jenny Raitt'

<<u>JRaitt@town.arlington.ma.us</u>>

Subject: RE: ACC - draft of regs

All,

Susan has kindly provided wording for a proposed new section (new section 31, "Climate Change Resilience") for our consideration. It is incorporated into the attached draft of the regs with today's date. In case you've already reviewed the draft I sent dated November 4, 2017, I also attach a copy of just the proposed new section.

One other minor change is included in the draft regs attached: changing reference to the 100-year flood to the 1%-annual-chance-flood in Section 23.

To avoid last-minute competing drafts, if you plan to circulate written comments or a marked-up draft, please do so not later than Wednesday at 4:00 p.m. Otherwise, please bring your comments and present them at our meeting on Thursday.

Thanks.

Nathaniel

From: Nathaniel Stevens [mailto:stevensnathaniel11@gmail.com]

Sent: Saturday, November 04, 2017 12:16 PM

To: Curt Connors

Cc: Susan Chapnick; Lela Shepherd; David E. White; Cathy Garnett; Tirone,

Charles; Mike Nonni; Nathaniel Stevens

Subject: Re: ACC - draft of regs

All.

Please find attached for your reading pleasure a next draft of the Regulations. In the AURA section, I not only eliminated the "zones" as we discussed doing, but also re-ordered things a bit. In the list of characteristics of the AURA, I added a factor of ability to provide resilience for/to climate change - please consider if it makes sense.

Susan will be providing separately proposed text for a section on climate change resiliency. That would get its own section number or become section 30 in place of wildlife habitat.

Thanks, Nathaniel

On Thu, Nov 2, 2017 at 3:46 PM, Curt Connors curtconnors@hotmail.com wrote:

Minor cleanup edits and a few comments are attached. Sorry for the late hour.

Curt

From: Nathaniel Stevens

<stevensnathaniel11@gmail.com<mailto:stevensnathaniel11@gmail.com>>

Sent: Sunday, October 22, 2017 6:40 PM

To: Susan Chapnick

Cc: Lela Shepherd; David E. White; Cathy Garnett; Tirone, Charles; Curt

Connors; Mike Nonni; Stevens, Nathaniel (work)

Subject: Re: ACC - draft of regs

Please find attached a further revised draft of the regulations, with today's date. Some points to consider in our discussion at our November 2 hearing:

- 1. Do we want to keep the requirement that abutters be notified of an RDA? (Section 8)?
- 2. In the AURA section (25), I've added that there impervious surface shall not intrude farther into the AURA than pre-project conditions unless that total area of impervious surface is "significantly decreased" or other mitigation is provided. Are we comfortable with that standard?
- 3. Related to # 2, what will be the rule for undeveloped lots?

4. For variance requests, Section 28, I propose deleting the requirement that the variance request must be filed with the NOI. Sometimes it does not become apparent that a variance is needed until after the NOI is filed and the matter is being discussed.

Thanks, Nathaniel

On Mon, Oct 16, 2017 at 8:07 PM, Susan Chapnick <s.chapnick@comcast.net<>mailto:s.chapnick@comcast.net>> wrote:

All:

Here are my comments and minor suggested edits.

Thanks,

Susan

From: Nathaniel Stevens

[mailto:stevensnathaniel11@gmail.com<mailto:stevensnathaniel11@gmail.com>]

Sent: Sunday, October 15, 2017 9:39 PM

To: Lela Shepherd; David E. White; Cathy Garnett; Tirone, Charles; Curt

Connors; Mike Nonni; Stevens, Nathaniel (work); Susan Chapnick

Subject: ACC - draft of regs

Hope everyone had a nice weekend.

Attached for possible discussion at our meeting this Thursday is the next draft of our wetland regs. I think I captured most of the comments from our discussion in July, but my notes weren't clear on one or two points.

Nathaniel

REGULATIONS – WETLANDS PROTECTION

Section 1 - Introduction and Purpose	I
Section 2 - Jurisdiction	
Section 3 - Burden of Going Forward and Burden of Proof	3
Section 4 - Definitions	3
Section 5 - Time Periods	
Section 6 - Actions by Conservation Commission	9
Section 7 - Working Sessions	. 10
Section 8 - Determination of Applicability	. 10
Section 9 – Emergency Certification	. 12
Section 10 – Notice of Intent/Application for Permit	. 12
Section 11 - Filing Fees & Consultant Fees	
Section 12 - Plan Requirements	. 16
Section 13 - Area to be Staked Prior to Site Inspection	. 18
Section 14 - Public Hearings	. 18
Section 15 - Issuance of Permit	. 19
Section 16 - Extension of Permit	. 20
Section 17 – Minor Amendment of Permit	. 21
Section 18 - Certificate of Compliance	. 22
Section 19 – Prohibited Materials	. 23
Section 20 - Banks	. 23
Section 21 - Vegetated Wetlands (Wet Meadows, Marshes, Swamps, and Bogs)	. 24
Section 22 - Land Under Water Bodies (Under Any Stream, Pond or Lake)	. 28
Section 23 - Land Subject to Flooding (Bordering and Isolated)	. 30
Section 24 - Vegetation Removal and Replacement	. 32
Section 25 – Adjacent Upland Resource Area	. 37
Section 26 – Vernal Pool and Its Associated 100-Foot No-Disturbance Zone	. 41
Section 27 – Riverfront Area	. 43
Section 28 - Variances	. 43
Section 29 - Areas of Critical Environmental Concern	. 44
Section 30 – Wildlife Habitat	
Section 32 – Ecological Restoration Projects	. 46
Section 33 - Stormwater Management	
Section 34 - Severability; Compliance With Court Decisions	. 46
Section 35 - Effective Date	. 47

Section 1 - Introduction and Purpose

A. Introduction. These regulations are promulgated by the Town of Arlington Conservation Commission pursuant to the authority granted to it under the Town of Arlington Wetlands Protection Bylaw (hereinafter referred to as the "Bylaw"). These regulations complement and implement the Bylaw and shall have the force of law upon their effective date. These regulations set forth additional definitions, regulations and performance standards necessary to protect the values and/or intent of the Bylaw, protect additional resource areas and wetland values, and

specify standards and procedures stricter than those of the Wetlands Protection Act, G.L. c. 131, § 40 and implementing regulations at 310 CMR 10.00. Only those exemptions or provisions of explicitly stated in the Act and state wetland regulations at 310 CMR 10.00 explicitly stated in these regulations apply.

The portion of these regulations concerning consultants and consultant fees are also promulgated pursuant to the authority granted the Commission under G.L. c. 44, § 53G.

B. Purpose. The Bylaw sets forth a public review and decision making process by which activities affecting areas subject to protection under the Bylaw are to be regulated in order to ensure the protection of the following interests: public or private water supply, ground water supply, flood control, erosion control and sedimentation control, storm damage prevention, other water damage prevention, prevention of pollution, protection of surrounding land and other homes or buildings, wildlife protection, plant or wildlife habitat, aquatic species and their habitats, and the natural character or recreational values of the wetland resources (collectively, "Resource Area Values" or "Interests of the Bylaw"). The purposes of these regulations are to define and clarify that process by establishing standard definitions and uniform procedures by which the Arlington Conservation Commission shall carry out its responsibilities under the Bylaw.

Section 2 - Jurisdiction

- A. Areas subject to protection under the Bylaw and these regulations:
 - (1) Any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp.
 - (2) Any river, stream, creek, pond, reservoir, or lake.
 - (3) Any bank of the areas set forth in A(1) or A(2) above.
 - (4) Any land under the areas set forth in A(2) above said waters.
 - (5) Any land bordering the areas set forth in A(1) or A(2) or A(3) above.
 - (6) Any riverfront area as hereinafter defined.
 - (7) Any land subject to flooding or inundation.
- B. Activities subject to regulation under the Bylaw and the provisions of these regulations:
 - (1) Any activity proposed or undertaken which constitutes removing, filling, dredging, discharging into, building upon, degrading or otherwise altering any area specified in Subsection A of this Section is subject to regulation under the Bylaw and requires the filing of an application for permit.
 - (2) Any activity proposed or undertaken outside the areas specified in Subsection A above shall not be subject to regulation under the Bylaw unless, in the judgment of the Conservation Commission, said activity may result or has resulted in the removing, filling, dredging, discharging into, building upon, degrading or otherwise altering an area specified in Subsection A above. If anyone wishes to have the Conservation Commission determine whether an activity may be subject to regulation under the Bylaw, he or she shall submit a request for determination of applicability pursuant to Section 8(A) of these regulations.
 - (3) For stormwater management systems constructed per Massachusetts Department of Environmental Protection's stormwater management policy (November 18, 1996) or

standards (January 2, 2008), any activity proposed or undertaken within said stormwater management systems that includes the removal of less than 12 inches of sediment from a basin, water quality swale or constructed stormwater wetland (including forebays or other forms of pretreatment) is not subject to these regulations.

Section 3 - Burden of Going Forward and Burden of Proof

A. The applicant shall have the burden of going forward with credible evidence from a competent source in support of all matters asserted pursuant to Subsection B below by the applicant in accordance with his or her burden of proof.

B. The applicant shall have the burden of proving by a preponderance of the credible evidence from a competent source that the work in the application will not have a significant or cumulative effect upon the wetland values protected by the Bylaw. Failure to meet the burden of proof shall be cause for the Conservation Commission to deny the application for permit along with any work or activity proposed therein.

Section 4 - Definitions

A. Except as otherwise provided in the Bylaw or these regulations, the definitions of terms in the Bylaw shall be as set forth in the Wetlands Protection Act. M.G.L. c. 131, Section 40, and its regulations, 310 C.M.R. 10.00.

- B. As used in these regulations, the following terms shall have the meanings indicated:
 - (1) ABUTTER shall mean the owner of any land within 100 feet of the property line of the land where the activity is proposed, as determined by the most recent assessors' records including any land located directly across a street, river, stream or pond that is within 100 feet of the project's limits of work.
 - (2) ACTIVITY On or in any area subject to protection by the Bylaw and its regulations: any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverging of groundwater or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; the cutting or removal of 20% or more of the growth or limbs of trees or vegetation; and any other changing of the physical characteristics of land or the physical or chemical characteristics of water.
 - (3) ADJACENT UPLAND RESOURCE AREA the area 100 feet horizontally lateral from the boundary of any of the following Resource Areas: marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, bank, stream, creek, pond, reservoir, or lake, or resource area defined in Section 2.A(1) through (4).
 - (4) ALTER shall mean to change the condition(s) of any area subject to protection by the Bylaw and shall include but not be limited to one or more of the following actions upon the resource areas protected by this Bylaw:;
 - (a) fill, removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;

- (b) changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood storage retention areas;
- (c) draining, disturbing or lowering of the water level or water table;
- (d) the dumping, discharging or filling with any material which could degrade the water quality;
- (e) driving of pilings, erection of buildings or structures of any kind;
- (f) placing of any object or obstruction whether or not it interferes with the flow of water:
- (g) destruction, extensive trimming (defined as 20% or more of limbs or growth), or removal of plant life, vegetation, or trees;
- (h) changing of water temperature, biochemical oxygen demand, nutrient concentration or chemical concentration or other natural characteristics of the receiving water;
- (i) any activities, changes or work which pollutes any stream or body of water, whether located in or out of the Town of Arlington;
- (j) application of pesticides and herbicides;
- (k) any activity, change or work which adversely effects groundwater or drinking water supply; or
- (1) any incremental activity that has or may have a cumulative adverse effect on the Resource Area Values protected by the Bylaw.
- (5) APPLICANT shall mean a person filing a Request for Determination of Applicability or Notice of Intent or other application with the Commission.
- (6) AREA OF CRITICAL ENVIRONMENTAL CONCERN An area so designated by the Secretary of Environmental Affairs of the Commonwealth of Massachusetts pursuant to regulations (301 C.M.R. 12.00), said designation being due to the particular environmental factors which impact upon the areas in question and which highlight the importance of each area so designated.
- (7) AREA SUBJECT TO PROTECTION UNDER THE BYLAW Any area specified in Section 2(A). It is used synonymously with "resource area," each of which is defined in greater detail in these regulations.
- (8) BANK shall be defined as the portion of the land surface which normally abuts and confines a water body, often between the mean annual low flow level and the first observable break in the slope or the mean annual flood level, whichever is lower;
- (9) BEST AVAILABLE MEASURES The most up-to-date technology or the best designs, measures or engineering practices that have been developed and that are commercially or readily available.
- (10) BEST MANAGEMENT PRACTICES Technologies, designs, measures or engineering practices that are in general use to protect the resource area values of the Bylaw.
- (11) BORDERING shall be defined to include any land within either of the following or the greater thereof:
 - (a) 100 feet horizontally lateral from the edge of any marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, river, stream, creek, pond, reservoir, or lake; or
 - (b) within the maximum lateral extent of the water elevation of the statistical 100 year frequency storm.

- (12) BOUNDARY The boundary of an area subject to protection under the Bylaw. A description of the boundary of each area is found in the appropriate section of these regulations or in the Bylaw.
- (13) BUFFER ZONE see definition for ADJACENT UPLAND RESOURCE AREA;
- (14) BYLAW Article 8 of Title V of the Bylaws of the Town of Arlington, Massachusetts, entitled "Wetlands Protection".
- (15) BYLAW INTERESTS are defined in Section 1, above; also known as Resource Area Values
- (16) CALIPER Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.
- (17) CERTIFICATE OF COMPLIANCE A written determination by the Conservation Commission as to whether work or a portion thereof has been completed in accordance with the permit issued under the Bylaw governing said work.
- (18) CONDITIONS Those requirements set forth in a written permit issued by the Conservation Commission for the purpose of permitting, regulating or prohibiting any activity that removes, fills, dredges or alters an area subject to protection under the Bylaw.
- (19) CONSERVATION COMMISSION That body in Arlington comprised of members lawfully appointed pursuant to M.G.L. c. 40, Section 8C.
- (20) CREEK The same as "stream."
- (21) CUMULATIVE EFFECT shall mean an effect that is significant when considered in combination with other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated as a separate phase of the same project, such as the build-out of a subdivision or an industrial park, or unrelated but reasonably foreseeable actions, including other development projects that are currently under construction, under review or that may be expected to come forward.
- (22) DATE OF ISSUANCE The date a permit, order, or determination is mailed, as evidenced by a postmark, or the date it is hand-delivered.
- (23) DATE OF RECEIPT The date of delivery to an office, home or usual place of business by mail or hand delivery.
- (24) DETERMINATION:
 - (a) DETERMINATION OF APPLICABILITY A written finding by the Conservation Commission after a public hearing as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw.
 - (b) DETERMINATION OF SIGNIFICANCE A written finding by the Conservation Commission, after a public hearing, that the area on which the proposed work is to be done or which the proposed work will alter is significant to one or more of the interests identified in and protected by the Bylaw and these regulations.
 - (c) NOTIFICATION OF NONSIGNIFICANCE A written finding by the Conservation Commission, after a public hearing, that the area on which proposed work is to be done, or which the proposed work will alter, is not significant to any of the interests of the Bylaw.

- (25) DBH ("Diameter at Breast Height") The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks) measured 4 ½ feet from the existing grade at the base of the tree.
- (26) DREDGE To deepen, widen or excavate, either temporarily or permanently.
- (27) EXTENSION PERMIT A written extension of time within which the authorized work shall be completed.
- (28) FILL To deposit any material so as to raise the elevation of land surface or ground, either temporarily or permanently.
- (29) FLOOD CONTROL The prevention or reduction of flooding and flood damage.
- (30) GROUNDWATER shall mean all subsurface water contained in natural geologic formations or artificial fill including soil water in the zone of aeration. Activities within 100 feet of resource areas shall not significantly alter the existing quality or elevation of naturally occurring groundwater.
- (31) IMMINENT RISK TO PUBLIC HEALTH AND SAFETY means the vegetation is an imminent risk to public health or safety or property as confirmed in writing and submitted to the Commission by the Arlington Tree Warden, Fire Department Representative, Public Safety Officer, or a certified arborist.
- (32) IN or WITHIN an area subject to protection under the Bylaw means in, through, under, over, cantilevered over, shading; does not require physical touching of said area subject to protection. With respect to structures, "In" is measured from the drip-line of the roof or foundation or footing, whichever is closer to the resource area.
- (33) INTERESTS IDENTIFIED IN THE BYLAW Those interests specified in Section 1 of the Bylaw and Section 1(B) of these regulations. Also called Bylaw Interests or Resource Area Values.
- (34) ISSUING AUTHORITY The Arlington Conservation Commission.
- (35) LAND SUBJECT TO FLOODING OR INUNDATION shall mean the land within the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm; said boundary shall be that determined by reference to the most recently available flood profile data prepared for Arlington within which the work is proposed under the National Flood Insurance Program ("NFIP"). Where NFIP data are unavailable or deemed by the Commission to be outdated or inaccurate or not reflecting current conditions, the boundary of said land shall be based on the maximum lateral extent of flood water which has been observed or recorded, or other evidence presented and considered by the Commission. Said land shall also include isolated areas which frequently or seasonably hold standing water; such areas may or may not be characterized by wetland vegetation or soil characteristics.
- (36) LAKE Any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.
- (37) LAND SUBJECT TO FLOODING Defined in Section 23.
- (38) LAND UNDER WATER BODIES AND WATERWAYS The bottom of or land under the surface of a creek, river, stream, pond or lake. Land under water bodies is further defined in Section 22.
- (39) LOT An area of land in one ownership, with definite boundaries. When an area of land is comprised of more than one lot, the lots share a common boundary and are owned or controlled by the same entity or individual(s), and the lots combined are used for the same purpose or enterprise, the Commission may consider the lots as a single LOT.

- (40) MARSH, FRESHWATER WETLAND, SWAMP, WET MEADOW, BOG Defined in Section 21.
- (41) MEADOW (or WET MEADOW) Defined in Section 21.
- (42) NOTICE OF INTENT The written notice filed by any person intending to remove, fill, dredge or alter an area subject to protection under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, Section 40, or the Bylaw, or both.
- (43) ORDER An order of conditions, superseding order or final order, whichever is applicable, issued pursuant to M.G.L. c. 131, Section 40 or the Bylaw, or both.
- (44) OWNER OF LAND ABUTTING THE ACTIVITY The owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook or canal.
- (45) PERMIT shall mean the document issued by the Conservation Commission pursuant to this Bylaw which allows work in accordance with conditions set by the Commission in the resource areas protected by this Bylaw; also see "Order" in this definition section.
- (46) PERMIT DENIAL shall mean the document issued by the Conservation Commission pursuant to the Bylaw which disallows proposed work.
- (47) PERSON shall include any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, Commonwealth of Massachusetts when subject to town Bylaws, any public or quasi-public corporation or body when subject to town Bylaws or any other legal entity, including the Town of Arlington or its legal representative, agents or assigns.
- (48) PERSON AGGRIEVED Any person who, because of an act of failure to act by the Conservation Commission, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in the Bylaw.
- (49) PLANS Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission to describe the site and/or work to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the interests identified in the Bylaw.
- (50) POND Any open body of fresh water, either naturally occurring or man-made by impoundment or excavation, which is never without standing water due to natural causes, except in periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten-year average for that same month. Basins or lagoons which are part of wastewater treatment plants, swimming pools or other impervious manmade retention basins shall not be considered ponds.
- (51) PREVENTION OF POLLUTION The prevention or reduction of chemicals (e.g., nutrients, hydrocarbons, solvents, metals, vapors) known or suspected of causing harm to humans, plants, or animals via exposure to any media (air, water, soil, sediment)
- (52) PRIVATE WATER SUPPLY Any source or volume of surface or groundwater demonstrated to be in any private use or shown to have potential for private use for domestic purposes.
- (53) PROJECT LOCUS The Lot on which an applicant proposes to perform an activity subject to regulation under the Bylaw
- (54) PROJECT SITE the area within the Project Locus that comprises the limit of work for activities, including but not limited to, the dredging, excavating, filling, grading, the

- erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways, and the installation of drainage, stormwater treatment, environmentally sensitive site design practices, sewage and water systems.
- (55) PROTECTION OF FISHERIES Protection of the capacity of an area subject to protection under the Bylaw to prevent or reduce contamination or damage to fish and to serve as their habitat and nutrient source.
- (56) PROTECTION OF WILDLIFE The protection of any plant or animal species, including but not limited to those listed as endangered, threatened or special concern, or on the Watch List by the Massachusetts Natural Heritage Program; listed as Federally Endangered or Federally Threatened by the U.S. Fish and Wildlife Service; deemed locally threatened, in writing, by the Conservation Commission; and means protection of the ability of any resource area to provide food, breeding habitat, shelter or escape cover and species falling within the definition of wildlife set forth in these regulations.
- (57) PUBLIC WATER SUPPLY Any source or volume of surface water or groundwater demonstrated to be in public use or approved for water supply pursuant to M.G.L. c. 111, Section 160 by the Division of Water Supply of the Department of Environmental Protection or shown to have a potential for public use.
- (58) QUORUM refers the number of Commissioners who must be present before business may be transacted; here, it shall mean a majority of the number of Commissioners then in office.
- (59) RESOURCE AREA ENHANCEMENT with the Commission's approval: removal or management of invasive species; removal of man-made debris, garbage, or trash; or planting of non-invasive species of vegetation.
- (59)(60) REMOVE To take away any type of material, thereby changing the elevation of land surface or ground, either temporarily or permanently.
- (60)(61) REQUEST FOR DETERMINATION OF APPLICABILITY A written request made by any person to the Conservation Commission for a determination as to whether a site or work thereon is subject to the Bylaw.
- (61)(62) RESOURCE AREA Is used synonymously with "area subject to protection under the Bylaw," each one of which is listed in the Bylaw and in Section 2 of these regulations.
- (62)(63) RIVER shall mean any natural flowing body of water that empties to any ocean, lake, pond, reservoir, stream, or other river.
- (63)(64) RIVERFRONT AREA shall mean the area of land between a river's mean annual high water line and a parallel line measured 200 feet horizontally landward of the mean annual high water line.
- (64)(65) SIGNIFICANT shall mean plays a discernable role; e.g., a resource area is significant to an interest identified in the Act when it plays a role in the provisions or protection, as appropriate, of that interest.
- (65)(66) STORM DAMAGE PREVENTION The prevention of damage caused by water from storms, including but not limited to erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, waterborne debris or waterborne ice.
- (66)(67) STREAM A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to hydraulic gradient, and includes streamlets and

- rivulets. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is a stream.
- (67)(68) STRUCTURE means a combination of materials or things arranged or constructed for permanent or temporary occupancy, shelter, or use, such as a building, bridge, trestle, wireless communications facility, tower, rip rap associated with stormwater outfalls, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, swimming pool, sports court, shelters, piers, wharves, bin, fence, sign, or the like.
- (68)(69) TREE REMOVAL Any act that will cause a tree to die within a three-year period.
- (69)(70) VEGETATED WETLANDS Defined in Section 21.
- (70)(71) WITHIN See IN above.
- (71)(72) WILDLIFE Any non-domesticated mammal, bird, reptile, amphibian, fish, mollusk, arthropod or other invertebrate other than a species of the Class insects which has been determined by the Commonwealth of Massachusetts or any agency thereof to be a pest whose protection under the provisions of the Bylaw would be a risk to man.
- (72)(73) WILDLIFE HABITAT shall mean the area being used by or necessary to provide breeding or nesting habitat, shelter, food and water for any animal species.
- (73)(74) WORK shall mean the same as "activity."

Section 5 - Time Periods

All time periods of 10 days or less specified in the Bylaw and these regulations shall be computed using business days only. In the case of a Determination or Order, such period shall commence on the first day after the date of issuance and shall end at the close of business on the 10th business day thereafter. All other time periods specified in the Bylaw and regulations shall be computed on the basis of calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day following.

Section 6 - Actions by Conservation Commission

- A. Where the Bylaw states that a particular action (except receipt of a request or notice) is to be taken by the Conservation Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.
- B. Where the Bylaw states that a determination, permit, or notification or certificate of compliance shall be signed and issued by the Conservation Commission, that action is to be taken by the majority of the quorum present at a public meeting or hearing, or by a majority of the members then in office who need not convene as a body in order to sign said permit or notification, provided that the Commission met pursuant to the Open Meeting Law, M.G.L. c. 30A, Sections 18 through 25, when voting on the matter.

C. Where the Bylaw states that the Conservation Commission is to receive a request or notice, Conservation Commission means a member of the Conservation Commission or an individual designated by the Conservation Commission to receive such request or notice.

Section 7 - Working Sessions

When the Commission has time available, as a matter of courtesy, it may, but is not required, to conduct a working session with any person seeking guidance or direction on what type of application to file with the Commission, and what information the Commission might like to see in such an application in addition to that specified elsewhere in these regulations or the state Wetlands Protection Regulations. No one has a right to a working session.

Any working session shall be held in accordance with the Open Meeting Law, M.G.L. c. 30A, Sections 18-25.

For any working session, notwithstanding the Plan requirements in Section 12, the following information at a minimum must be provided (at the working session):

- (1) a map or plan showing the location of the proposed work;
- (2) photographs (minimum 5" x 7" size) of the area of the proposed work; and
- (3) a sketch of the area of the proposed work, showing existing conditions (structures, approximate locations of actual or potential resource areas).

Statements by the Commission or any Commission member in a working session shall not be construed as prejudging a project or guaranteeing a particular action by the Commission on a subsequent filing. The Commission shall not be bound any comments or opinions offered at a working session. A person who relies on any statements or information provided at the working session does so at his or her own risk.

Section 8 - Determination of Applicability

- A. Requests for determination of applicability.
 - (1) Any person who desires a determination as to whether the Bylaw applies to land, or to work that may affect an area subject to protection under the Bylaw, may submit to the Conservation Commission <u>electronically and</u> by certified mail, regular mail, or hand delivery a written request for a determination of applicability and other application materials in accordance with the submittal requirements set forth in the filing guidelines for requests for determination of applicability provided in these regulations. <u>Said person shall also provide the number of paper copies as set forth in the filing guidelines of the Commission</u>.
 - (2) Simultaneously with filing the Request for Determination of Applicability, the applicant shall provide notification to each abutter by hand delivery or certified mail, return receipt requested first class mail, postage prepaid. An affidavit specifying how and when abutter notice was made shall accompany the RDA. The contents of the abutter notification shall be specified by the Commission and shall, at a minimum, provide a brief description of the proposed work (if any), list resource areas involved, list the location (street address,

- assessors lot and map identifiers), specify where a copy of the request may be obtained, and the date, time, and place of the hearing.
- (3) Said request shall include sufficient information to enable the Conservation Commission to find and view the area and determine whether the proposed work will alter an area subject to protection under the Bylaw.
- (4) A request for determination of applicability shall include certification that the owner of the area subject to the request, if the person making the request is not the owner, has been notified in writing via certified mail, return-receipt requested that a determination is being requested under the Bylaw.
- (5) A request for determination of applicability shall be filed with the Commission no less than 10 days prior to the Commission's next meeting and simultaneously copies of the request for determination of applicability shall be hand delivered or mailed to each Commission member (including associate members). Failure to meet such filing and distribution deadline shall be cause for the Commission to continue or defer discussion of the request for determination to the following meeting.

B. Determination of applicability.

- (1) Within 21 days after the date of receipt of the request for a determination of applicability, the Conservation Commission shall hold a public hearing on the request for a determination of applicability. Notice of the time and place of the public meeting at which the determination will be made shall be given by the Conservation Commission at the expense of the person making the request not less than five business days prior to such meeting, by publication in a newspaper of general circulation in the Town of Arlington, and by mailing a notice to the person making the request, the property owner if not the applicant. The Commission will forward the notice of this hearing to the Town Manager, Board of Selectmen, Town Clerk, Planning Department, Town Counsel, Department of Public Works, Town Engineer, Zoning Board of Appeals, Board of Health, Building Inspector, Redevelopment Board. Notice shall also be given in accordance with the Open Meeting Law, M.G.L. c. 30A, Sections 18 - 25. Said determination shall be signed and issued by the Conservation Commission, and copies thereof shall be sent by the Conservation Commission to the person making the request and to the owner within 21 days of the close of the public hearing or any continuances thereof. Said determination shall be valid for three years from date of issuance and may not be extended or renewed.
- (2) The Conservation Commission shall find that the Bylaw applies to the land, or a portion thereof, if it is an area subject to protection under the Bylaw as defined in Section 2(A) above. The Conservation Commission shall find that the Bylaw applies to the work on the portion thereof, if it is an activity subject to the regulations under the Bylaw as defined in Section 2(B) above.
- (3) An application for permit shall be filed in the event of a positive determination, and all of the procedures set forth in Section 10 shall apply.
- (4) Request for Determination of Applicability vs. Notice of Abbreviated Resource Area Delineation. No Request for Determination of Applicability or Determination of Applicability shall be used to evaluate or confirm the delineation of any Resource Area.

Section 9 – Emergency Certification

A. Any person requesting permission to perform an emergency project, or within 24 hours of commencing an emergency project, shall specify in writing why the project is necessary for the protection of the health or safety of the citizens of the Town and what agency of the Commonwealth (or subdivision thereof) or Town entity is to perform the project or has ordered the project to be performed. Work may not proceed unless the Commission or its Administrator has certified the work to be necessitated by an emergency. In no case shall work or alteration by such certification extend beyond the minimum amount of work and time necessary to abate the emergency. If the project is certified to be an emergency by the Conservation Commission, its Administrator, its Chair or Vice Chair, or the Department of Environmental Protection, the certification shall include a description of the work which is to be performed and shall not include work beyond that necessary to abate the emergency. If practicable, a site inspection shall be made prior to certification. If issued by the Conservation Administrator, the emergency certification must be ratified at the next meeting of the Conservation Commission.

B. An emergency certification may be issued by the Conservation Commission Chair, Vice Chair, or Administrator and shall be issued only for the protection of public health or safety.

C. The time limitation for performance of emergency work shall not exceed 30 days, or 60 days for Immediate Response Actions approved by the Bureau of Waste Site Cleanup (BWSC) of the Department of Environmental Protection in accordance with the provisions of 310 CMR 40.0410. The emergency certification may be extended for an additional 15 days only for good cause.

D. In appropriate circumstances, the Commission may require that wWithin 14 days of issuance of an emergency certification, a Notice of Intent/permit application shall be filed by the recipient of the emergency certification with the Conservation Commission for review as provided by the Bylaw and these Regulations.

E. Upon failure to meet the requirements of this section and other requirements of the Conservation Commission, the Conservation Commission may, after notice and a public hearing, revoke or modify an emergency certification and order restoration and mitigation measures.

Section 10 – Notice of Intent/Application for Permit

A. Any person who proposes to do work or activity that will remove, fill, dredge or otherwise alter any area subject to protection under the Bylaw shall submit an application, called a Notice of Intent, for a permit on forms specified by the Conservation Commission and in conformance with the plan requirements in Section 12. Simultaneously with filing the Notice of Intent with the Commission or its Agent, an applicant shall provide an electronic copy of the application to the Commission and provide the number of paper copies specified by the Conservation Administrator which are sufficient for each Commission member (including associate members) desiring a paper copy, and said paper copies shall be provided with envelopes with sufficient first-class postage, prepaid, for mailing (by the Administrator) of such copies to Commission members. Failure to provided the specified number of paper copies or electronic copies do so

shall be grounds for the Commission to continue the public hearing without the applicant's consent. Simultaneously with filing the Notice of Intent, the applicant shall provide notification to each abutter by hand delivery or certified mail, return receipt requested. The contents of the abutter notification shall be specified by the Commission and shall, at a minimum, provide a description of the proposed work, resource areas involved, location (street address and assessor's map and lot identifier), where a copy of the request may be obtained, and the date, time, and location of the hearing.

B. Upon receipt of the application materials referred to in Subsection A above, the Conservation Commission shall assign a file number, which file number shall be that issued by the Department of Environmental Protection ("DEP") for a Notice of Intent also submitted under the Wetlands Protection Act. The DEP will notify the applicant of the file number. The designation of file number shall not imply that the plans and supporting documents have been accepted or judged adequate for the issuance of a permit and does not prevent the Commission from requesting additional information at a later time. For a Notice of Intent not also filed under the Wetlands Protection Act, the Commission shall issue a file number.

C. If only a portion of a proposed project or activity lies within an area subject to protection under the Bylaw and the remainder of the project or activity lies outside those areas, all aspects of the project must be described in the detail, provided also that in such circumstances the Notice of Intent shall also contain a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel), when the point of discharge falls within an area subject to protection under the Bylaw.

D. A public hearing shall be held by the Conservation Commission with 21 days of receipt of the complete Notice of Intent.

E. An Abbreviated Notice of Resource Area Delineation may be filed to confirm the delineated boundary of Vegetated Wetland or other Area Subject To Protection Under the Bylaw on the site. If utilized, an applicant must file an Abbreviated Notice of Resource Area Delineation prior to filing a Notice of Intent. Alternatively, the boundary of a Resource Area may be determined through the filing of a Notice of Intent. The procedures for a Notice of Intent shall be used for an Abbreviated Notice of Resource Area Delineation. Consistent with Section 6 of the Bylaw, "Applicant's Obligation", the applicant shall have the burden of proving by a preponderance of the credible evidence from a competent source that the delineation of Vegetated Wetland or other Area Subject To Protection Under the Bylaw is accurate.

F. If the Commission determines that the applicant incorrectly or incompletely delineates a Resource Area(s), the Commission shall request that the applicant provide the correct delineation or missing information. If the correct delineation or missing information is not provided, the Commission shall close the hearing and issue a denial Order of Resource Area Delineation or denial Order of Conditions within 21 calendar days, specifying each Resource Area that is incorrectly or incompletely delineated. The Commission shall have the authority to deny any proposed Resource Area delineation when: 1) the application is incomplete; 2) the delineation is incorrect; or 3) the Commission requires additional information that is not provided by the applicant.

G. Review period. Resource area boundary delineations shall be reviewed only between April 1 and December 1 of each year. Delineations may be reviewed at the sole discretion of the Commission between December 1 and April 1, and shall be reviewed only when site conditions are such that the Commission believes it can adequately review the relevant resource area indicators (e.g., soils, vegetation, topography, hydrology).

Section 11 - Filing Fees & Consultant Fees

A. Filing Fees

- (1) Rules:
 - (a) Permit fees are payable at the time of application and are nonrefundable.
 - (b) Permit fees shall be calculated by the Conservation Commission per the Bylaw.
 - (c) Town, county, state, and federal projects are exempt from fees.
 - (e)(d) Upon request and demonstration of a compelling reason to do so, the Commission in its sole discretion may grant a waiver or variance from, or reduction of, Permit fees.
- (2) These filing fees are in addition to the filing fees charged under M.G.L. c. 131, Section 40, the Wetlands Protection Act.
- (3) The requirements of this section shall be commensurate with the nature, scope, type, and cost of the proposed project or activity.
- (4) Fees:
- a. Fees are payable at the time of filing the application and are non-refundable.
- b. Fees shall be calculated per schedule below.
- c. Town, County, State, and Federal Projects are exempt from fees.
- d. These fees are <u>in addition</u> to the fees paid under M.G.L. Ch. 131, s.40 (the Wetlands Protection Act).

(Category)

- (R1) Request for Determination of Applicability: \$150
- (N1) Minor project: \$200

(house addition, tennis court, swimming pool, utility work, work in, on or affecting any body of water, wetland or floodplain).

- (N2) Single Family Dwelling: \$600
- (N3) <u>Multiple dwelling structures</u>: \$600 + \$100 per unit all or part of which lies within 100 feet of wetlands or within land subject to flooding.
- (N4) Commercial, industrial, and institutional projects:

- \$800 + 50¢/s.f. wetland disturbed; 2¢/s.f. land subject to flooding; 100 s.f. buffer disturbed.)
- (N5) <u>Subdivisions</u>: \$600 + \$4/l.f. feet of roadway sideline within 100 ft. of wetlands or within land subject to flooding
- (N6) Other Fees: copies, printouts: per public records law
- (N7) Minor project change: \$50
- (N8) Work on docks, piers, revetments, dikes, and similar: \$4 per linear foot
- (N9) Resource boundary delineation (ANRAD): \$1 per linear foot
- (N10) <u>Certificate of Compliance (COC or PCOC)</u>: No charge if before expiration of Order, \$200 if after expiration date of Order.
- (N11) Amendments: \$300 or 50% of original local filing fee, whichever is less
- (N12) Extensions:
 - a. Single family dwelling or minor project: \$100.
 - b. Other: \$150.

B. Consultant Fees

Upon receipt of a Notice of Intent, Abbreviated Notice of Resource Area Delineation, or Request for Determination of Applicability, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. The fee is called the "Consultant Fee."

This Consultant Fee is pursuant to Bylaw § 16(B)(11) and independent from the Commission's "Rules for Hiring Outside Consultants" pursuant to G.L. Ch. 44, § 53G adopted June 21, 2007. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource area survey and delineation, analysis of resource area functions, including but not limited to wildlife habitat evaluations, hydrogeologic and drainage analysis, and advice on environmental or land use law and legal issues.

The Commission may require the payment of the Consultant Fee at any point in its deliberations prior to a final decision. Failure by the applicant to pay the Consultant Fee specified by the Commission within five (5) business days of the request for payment shall be cause for the Commission to deny issuance of a permit or other requested action.

The applicant shall pay the fee to be put into a revolving fund, which may be drawn upon by the Commission for specific consultant services approved by the Commission at one or more of its

public meetings. The consultant shall be chosen by, and report only to, the Commission or its designee.

The exercise of discretion by the Commission in making its determination to require payment of a Consultant Fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

The Commission shall return any unused portion of the Consultant Fee to the applicant unless the Commission decides at a public meeting that other further or additional or different services of the consultant are necessary to make an objective decision. Any applicant aggrieved by the imposition of or size of the Consultant Fee, or any act related thereto, may appeal according to the provision of the Massachusetts General Laws.

Section 12 - Plan Requirements

A. Plans shall describe the proposed activity and its effect on the environment. Due regard shall be shown for all natural features such as large trees, watercourses and water bodies, wildlife habitat and similar community assets.

- (1) The following items are set out as a minimum standard. The applicant may submit, or be required to submit, any further information that will assist in the Commission's review and that is deemed necessary to determine the proposed effect on the interests protected by the Bylaw. The Conservation Commission may waive any of these plan requirements it deems insignificant or irrelevant for a particular project.
- (2) An eight-and-one-half-inch-by-eleven-inch reproduction of the USGS quadrangle sheet showing the project locus, and in the case where the project requires two or more plans to show the locus, an eight-and-one-half-inch-by-eleven-inch sheet clearly identifying the proposed site and work in addition to the labeled boundaries of the resource areas.

B. Plan content.

- (1) The following information shall be provided:
 - (a) The names and addresses of the record owner(s), the applicant(s) and of all abutters, as determined by the most recent local tax list, unless the applicant shall have a more recent knowledge of such abutters.
 - (b) Description of any alteration to flood storage capacity on the site. Include calculations and watershed maps if necessary.
 - (c) Soil characteristics in representative portions of the site.
 - (d) The Commission may in its sole discretion require the applicant to provide a runoff plan and calculations using the Rational Method or "the Cornell" method, and based on the ten-year, fifty-year and one-hundred-year-flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes.

- (e) Methods to be used to stabilize and maintain any embankments facing any wetlands, or show slope on plans of less than or equal to 3 to 1.
- (f) Methods to control erosion during and after construction.

C. Plan specifications.

- (1) Drawings for a Request for Determination of Applicability must be to scale. All other application plans (e.g., for Notices of Intent) shall be drawn to scale (one inch equals 40 feet maximum) with the title designating the name of the project, location, the name(s) of the person(s) preparing the drawings and the date prepared, including all revision dates.
- (2) The Commission may require that plans and calculations be prepared and stamped by a registered professional engineer or a registered land surveyor of the Commonwealth of Massachusetts when, in the Commission's judgment, the proposed work warrants such professional certification. The Commission may also require preparation and submission of supporting materials by other professionals including, but not limited to, registered landscape architect, environmental scientist, geologist or hydrologist when in its judgment the complexity of the proposed work and/or the wetland values of the Resource Areas warrants the relevant specialized expertise. Submitted materials may be used by the Commission to evaluate the effects of the proposed project/work on wetland values and compliance with these regulations. Submission of requested materials does not imply approval of the project.
- (2) Drawings must include the boundary and location of all Resource Areas protected by the Bylaw on the project site and within 100 feet, regardless orof whether or not the applicant believes the work is subject to M.G.L. c. 131, Section 40, the Wetlands Protection Act or the Arlington Wetlands Bylaw
- (3) Alterations.
 - (a) Drawing must include a delineation of all alterations proposed in or adjacent to all Resource Areas as indicated below:
 - i. Areas to be dredged;
 - ii. Areas to be filled;
 - iii. Areas to be altered in any other way;
 - (b) All alterations should be clearly explained in text or footnotes.
- (4) All drawings shall show the distance twenty-five (25), fifty (50) and one-hundred feet from the resource areas listed in Section 2.A.(1) through (3) as well as the Riverfront Area.
- (5) Calendar dates of measurements, samplings, contours and so forth should appear with such data. Datum shall be stated in NAVD 88 base. The contour interval shall be no greater than two feet.
- (6) Indicate existing and final contours and contour interval used, including pond bottom and stream invert contours.
- (7) Indicate locations and elevations of sills and bottom of foundation(s) and septic system(s) (if any).
- (8) Indicate soil characteristics in representative parts of property, including depth of peat and muck in wetlands.
- (9) Indicate locations, sizes and slopes of existing and proposed culverts and pipes.
- (10) Include cross-section of all wetlands, showing slopes, bank and bottom treatments for wetland creation or replication.

- (11) For projects in land subject to flooding, include existing and proposed water storage capacity of the property, including calculations and data on which the capacity is based. If filling is proposed, determine the effect of loss of storage on downstream channels and culverts.
- (12) Indicate location and elevation of bench mark used for survey.
- (13) Indicate existing trees, stone walls, fences, buildings, historic sites, rock ridges and outcroppings.
- (14) Indicate invert elevations on catch basins.
- (15) Indicate proposed on-site pollution control devices, such as hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipators or vegetative buffers.
- (16) Show locations/details of erosion control devices.
- (17) Assessors Map and Lot number(s) shall be shown.
- (18) If location is within an Area of Critical Environmental Concern, it shall be so indicated on the plan.
- D. The requirements of this section shall be met commensurate with the nature, scope, type, and cost of the proposed project or activity

Section 13 - Area to be Staked Prior to Site Inspection

- A. Before site inspections can be made by the Conservation Commission or the Commission's agent, the following conditions must be met:
 - (1) Stakes shall be provided as follows:
 - (a) Stakes indicating the corners of houses or other structures nearest the wetland resource area.
 - (b) Stakes indicating the septic tank and the leaching field location.
 - (c) Stakes indicating the limit of work.
 - (2) Lot number or house number should be posted at location.
 - (3) Edges of all resource areas shall be delineated. (Please refer to rules and regulations for definitions.)
 - (4) Directions shall be made available to the Commission to locate property.
- B. Failure to have the lot staked may result in no review and thus delay of a project.
- C. Upon completion of staking, the Conservation Commission shall be notified and a site inspection shall be arranged.
- D. The requirements of this section shall be met commensurate with the nature, scope, type, and cost of the proposed project or activity.

Section 14 - Public Hearings

A. A public hearing shall be held by the Conservation Commission with 21 days of receipt of the complete Notice of Intent, and shall be advertised by the Commission at the applicant's expense in accordance with the Bylaw (Section 5) and the requirements of the Open Meeting Law, M.G.L. c. 30A, Sections 18-25. Abutter notification as detailed above shall be done by and at

the expense of the applicant at the time of filing the Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation, Abbreviated Notice of Intent or Notice of Intent.

B. Continued hearings.

- (1) Public hearings may be continued as follows:
 - (a) Without the consent of the applicant to a date certain announced at the hearing should the applicant or the applicant or the applicant's representative fail to provide less than tleast ten (10) calendar days prior to that scheduled meeting/hearing sufficient abutter notification, newspaper notification, an electronic copy or a sufficient number of paper copies for each Commissioner and the specified by the Conservation Administrator of any written information or documents intended for discussion at a meeting/hearing, or fail to provide less than ten (10) calendar days prior to that scheduled meeting/hearing to the Commission office or Agent Administrator with envelopes with sufficient first-class postage, prepaid, for mailing of such copies to Commission members.
 - (b) Without the consent of the applicant to a certain date announced at the hearing either for receipt of additional information offered by the applicant or others or for information required of the applicant deemed necessary by the Conservation Commission at its discretion; or
 - (c) With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing.
 - (d) Without the consent of the applicant, for lack of receipt of the DEP file number, to certain date announced at the hearing; or
 - (e) Without the consent of the applicant, for failure to pay the Consultant Fee pursuant to Section 11 of the Bylaw, to a date certain announced at the hearing.
 - (f) Without the consent of the applicant, for failure to pay the filing fee pursuant to Section 11 of the Bylaw, to a date certain announced at the hearing.
- (2) The date, time and place of any such continued hearing shall be publicized in accordance with the Open Meeting Law, and notice shall be sent by the applicant to any person at the hearing who so requests.

Section 15 - Issuance of Permit

A. Within 21 days of the close of the public hearing or any continuance thereof on an application/Notice of Intent for a permit, the Conservation Commission shall:

- (1) Make a determination that the area on which the work is proposed to be done, or on which the proposed work will remove, fill, dredge, discharge into, build upon, degrade or otherwise alter, is not significant to any of the interests identified in the Bylaw, and shall so notify the applicant;
- (2) Make a determination that the area on which the work is proposed to be done, or on which the proposed work will remove, fill, dredge or alter, is significant to one or more of the interests identified in the Bylaw and issue a permit for the protection of said interests;

- (3) Make a determination that the proposed work fails to meet the design specifications, performance standards, or other requirements of the Bylaw, its regulations, or policies of the Commission, or that the project fails to avoid or prevent unacceptable significant or cumulative effects upon the resource area values of the Bylaw, or that there are no conditions adequate to protect said values; or
- (4) If the Conservation Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Bylaw, it may issue a permit denial. The permit shall specify the information which is lacking and why such information is necessary. If the Commission issues a permit denial, no work may occur until an applicant reapplies and the Commission grants a permit allowing work.
- B. A permit allowing the proposed work shall impose such conditions, in the judgment of the Conservation Commission, that are necessary for the protection of those areas found to be significant to one or more of the interests identified in the Bylaw. Such a condition may include, but are not limited to the placement of permanent bounds (granite or metal) to demarcate all or part of a resource area or mitigation area. Said permit shall prohibit any work or any portion thereof that cannot be conditioned to meet said standards. The permit shall impose conditions setting limits on the quantity and quality of discharge from a point source (both open and closed channel) when said limits are necessary to protect the interests identified in the Bylaw.
- C. The permit shall be valid for three years from the date of its issuance.
- D. The permit shall be signed and issued by the Conservation Commission and shall be mailed or hand-delivered to the applicant, his or her agent or attorney.
- E. A copy of the plans describing the work and the permit shall be kept on file by the Conservation Commission and shall be available to the public at reasonable hours.
- F. Prior to the commencement of any work permitted or required by the permit, the permit shall be recorded in the Registry of Deeds or the Land Court. In the case of recorded land, the permit shall also be noted in the Registry's Grantor Index under the name of the owner of land upon which the proposed work is to be done. In the case of registered land, the permit shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the Conservation Commission within two weeks of recording. If work is undertaken without the applicant first recording the permit, the Conservation Commission may issue an enforcement order.

Section 16 - Extension of Permit

A. The Conservation Commission may extend a permit for a period of up to an additional three-year period from date of issuance. No permit may be extended for more than six years after date first issued. The request for an extension shall be made to the Conservation Commission at least 30 days prior to the expiration of the permit. The Commission shall hold a public hearing in accordance with the Bylaw and these regulations within 30 days of receipt of said request. Should said public hearing be continued past the date of the expiration of the permit, the

expiration date shall be stayed to the date on which the Commission votes on whether to extend the permit, should the Commission vote not to grant the request for permit extension.

- B. The Conservation Commission may deny the request for an extension and require the filing of a new application for permit for the remaining work in the following circumstances:
 - (1) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals and in the obtaining of other necessary permits;
 - (2) Where new information, not available at the time the permit was issued, has become available and indicates that the permit is not adequate to protect the resource area values identified in the Bylaw;
 - (3) Where incomplete work is causing damage to the resource area values identified in the Bylaw:
 - (4) Where work has been done in violation of the permit or the Bylaw or these regulations; or
 - (5) Where resource areas have changed.
- C. If issued by the Conservation Commission, the extension permit shall be signed by a majority of the quorum of the members of the Conservation Commission present.
- D. The extension permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. If work is undertaken without the applicant recording the extension permit, the Conservation Commission may issue an enforcement order or may itself record the extension permit.

Section 17 – Minor Amendment of Permit

A. In the event a permittee seeks to make a minor modification to an existing permit or other Commission determination, any such requested modification shall have the same or less impact on the resource area values protected by the Bylaw as the approved work. Requests for minor amendment shall follow the procedure described below. No amended permit shall be issued for a permit that has expired.

B. Procedure:

- (1) An applicant shall make a request for an amendment to the Conservation Commission. The request shall be either orally at a regularly scheduled meeting of the Commission or by submitting the request to the Commission in writing, which such request shall be discussed at a regularly scheduled meeting. The request shall describe what changes have been proposed and present any pertinent plans showing such changes.
- (2) The Conservation Commission first shall determine whether the requested change warrants the filing of a new Notice of Intent or whether it is of a sufficiently minor nature and can be considered as an amendment to the original Final Order of Conditions. The Conservation Commission may in its sole and unreviewable discretion determine the project change is relatively minor only if:
 - (a) the purpose of the project has not changed,
 - (b) the scope of the project has not increased,

- (c) the project still meets relevant standards in these regulations,
- (d) resource areas are still protected, and
- (e) the potential for adverse impacts to resource area values will not be increased.

If the Conservation Commission determines the proposed change(s) is not minor, then it shall not issue an amendment, but instead require the filing of a new Notice of Intent/application for permit if the permittee intends to continue to pursue the modification.

Ministerial correction of obvious mistakes, such as citing a wrong file number or typographical errors, may be accomplished by correction of the permit by the Commission or the Conservation Administrator.

- (3) If the Conservation Commission determines that a new Notice of Intent is not necessary, the applicant shall at its expense publish newspaper notice of the proposed amendment in accordance with the Bylaw (Section 5). Abutter notification of the proposed amendment shall also be done by and at the expense of the applicant at the time. The notice must describe that an amendment to an Order/permit is being requested, that the request is pending before the Commission for review, the date of the public hearing at which the Commission will consider the request for amendment, and where a copy of the application for the requested change may be obtained. The Conservation Commission shall provide notice of the public hearing in accordance with the requirements of the Open Meeting Law, M.G.L. c. 30A, Sections 18 25.
- (4) Under no circumstances will the issuance of an Amended Order of Conditions extend the effective date of the original Final Order of Conditions. The Amended Order shall run with the term of the original Order of Conditions or the effective date of an extended Order of Conditions.
- (5) The Amended Order should be issued on the form provided for an Order of Conditions/Permit, with the insertion of the word "Amended" and the amendment date. Amended Orders/Permit must be recorded with the registry of Deeds in the same manner as Orders.

Section 18 - Certificate of Compliance

- A. Upon written request by the applicant, a certificate of compliance shall be issued by the Conservation Commission within 21 days of receipt thereof, and shall certify if it so determines, that the activity or portions thereof described in the application for permit and plans has been completed in compliance with the permit and any amendment(s) thereto. If approved by the Conservation Commission, the certificate of compliance shall be signed and issued by the Commission.
- B. Prior to the issuance of a certificate of compliance, a site inspection shall be made by the Conservation Commission or its agent, in the presence of the applicant or the applicant's agent if applicant so desires.

- C. If the Conservation Commission determines, after review and inspection, that the work has not been done in compliance with the permit, it shall refuse to issue a certificate of compliance. Such refusal shall be issued within 21 days of receipt of a request for a certificate of compliance, shall be in writing, and shall specify the reasons for denial.
- D. If a project has been completed in accordance with plans stamped by a registered professional engineer or a land surveyor or a registered landscape architect for landscaping projects, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the permit shall accompany the request for a certificate of compliance. The Commission reserves the right to administer the requirements of this paragraph in its sole discretion commensurate with the nature, scope, type, and cost of the proposed project or activity.
- E. If the permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the certificate of compliance shall specify which, if any, of such conditions shall continue. The certificate shall also specify to what portion of the work it applies, if it does not apply to all the work regulated by the permit.
- F. The certificate of compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the Conservation Commission on the form specified by the Commission.

Section 19 – Prohibited Materials

The Commission has determined that the following materials are harmful to the resource area values of the Bylaw and therefore are prohibited in resource areas:

- A. Copper pipes on the exterior of any structure.
- B. Coal-tar based sealant (asphalt-emulsion based sealant is allowed).

Section 20 - Banks

A. Findings.

- (1) Banks are likely to be significant to wildlife, to plant or wildlife habitat, to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to the prevention of pollution, to erosion control and sedimentation control, and to the protection of fisheries. Where banks are composed of concrete, asphalt or other artificial impervious material, said banks are likely to be significant to flood control and storm damage prevention.
- (2) Banks are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater.
- (3) Where banks are partially or totally vegetated, the vegetation serves to maintain their stability, which in turn protects water quality by reducing erosion and siltation. Partially or totally vegetated banks provide habitat for wildlife.
- (4) Banks may also provide shade that moderates water temperatures, as well as providing breeding habitat and escape cover and food, all of which are significant to the protection

- of fisheries. Banks which drop off quickly or overhang the water's edge often contain numerous undercuts which are favorite hiding spots for important species.
- (5) Banks act to confine floodwater during the most frequent storms, preventing the spread of water to adjacent land. Because banks confine water during such storms to an established channel, they maintain water temperatures and depths necessary for the protection of fisheries. The maintenance of cool water temperatures during warm weather is critical to the survival of many species. An alteration of a bank that permits water to frequently and consistently spread over a larger and more shallow area increases the amount of property which is routinely flooded, as well as elevating water temperatures and reducing fish habitat within the main channel, particularly during warm weather.
- (6) Land bordering or within 100 feet of a bank is likely to be significant to the protection and maintenance of the bank, and therefore to the protection of the interests which these resources serve to protect.
- B. Definition, critical characteristics and boundary.
 - (1) A bank is the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent floodplain, or, in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone.
 - (2) The physical characteristics of a bank, as well as its location, as described in the foregoing Subsection B(1), are critical to the protection of the interests specified in Subsection A.
 - (3) The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is higher in elevation. The lower boundary of a bank is the mean annual low flow level or mean low water level.
- C. No activity, other than the maintenance of an already existing structure, shall be allowed which will result in the building within or upon, removing, filling, or altering of a bank.
- D. Any activity which is allowed under this section on a bank or on land bordering or within 100 feet of a bank shall comply with the following regulations. Any proposed work on a bank or bordering or within 100 feet of a bank shall not impair the following:
 - (1) The physical stability of the bank.
 - (2) The water-carrying capacity of the existing channel within the bank.
 - (3) Groundwater and surface water quality.
 - (4) The capacity of the bank to provide breeding habitat, escape cover and food for fisheries.
- E. No work shall be performed within 50 feet of an inland bank that abuts an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.

Section 21 - Vegetated Wetlands (Wet Meadows, Marshes, Swamps, and Bogs)

A. Findings.

- (1) Vegetated wetlands are likely to be significant to wildlife, to plant or wildlife habitat, to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, and to the protection of fisheries.
- (2) The plant communities, soils and associated low, often flat topography of vegetated wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in runoff and floodwaters.
- (3) Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.
- (4) Vegetated wetlands are areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the groundwater.
- (5) The profusion of vegetation and the low, flat topography of vegetated wetlands slow down and reduce the passage of floodwaters during periods of peak flow by providing temporary floodwater storage, and by facilitating water removal through evaporation and transpiration. This reduces downstream flood crests and resulting damage to private and public property. During dry periods the water retained in vegetated wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.
- (6) Wetland vegetation provided shade that moderates water temperatures important to fish life. Wetlands flooded by adjacent water bodies and waterways provide food, breeding habitat and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by overbank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide quantities of the microscopic plant and animal life required.
- (7) Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals and birds which are a source of food for important fish. Bluegills (*Lepomis macrochirus*), pumpkinseeds (*Lepomis gibbosus*), yellow perch (*Percs flavenscens*), rock bass (*Ambloplites rupestris*) and all trout species feed upon nonaquatic insects, Largemouth bass (*Micropterus salmoides*), chain pickerel (*Esox niger*) and northern pike (*Esox lucius*) that feed upon small mammals, snakes, nonaquatic insects, birds and amphibians. These wetlands are also important to the protection of rare and endangered wildlife species.
- (8) Vegetated wetlands, together with land bordering or within 100 feet of a vegetated wetland, serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces which may be detrimental to wildlife, and fisheries downstream of the vegetated wetlands.
- (9) Land bordering or within 100 feet of a vegetated wetland is likely to be significant to the protection and maintenance of vegetated wetlands, and therefore to the protection of the interests which these resource areas serve to protect.

B. Definition, critical characteristics and boundary.

(1) Vegetated Wetlands are freshwater wetlands, including both bordering vegetated wetlands (i.e., bordering on freshwater bodies such as on creeks, rivers, streams, ponds and lakes), and isolated vegetated wetlands which do not border on any permanent water body. The types of freshwater wetlands are wet meadows, marshes, swamps, bogs and vernal pools.

- Vegetated Wetlands are areas where soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. The ground water and surface water hydrological regime, soils and the vegetational community which occur in each type of freshwater wetlands, including both bordering and isolated vegetated wetlands, are defined under the Bylaw based on G.L. c. 131, § 40.
- (2) The boundary of Vegetated Wetland, whether Bordering or Isolated, is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act.
- (3) The boundary shall be defined or delineated by the following:
 - (a) Areas containing a predominance of wetland indicator plants are presumed to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by 50% or more wetland indicator plants shall be presumed accurate when:
 - all dominant species have an indicator status or of obligate, facultative wetland+, facultative wetland, or facultative wetland- and the slope is distinct or abrupt between the upland plant community and the wetland plant community; or
 - 2. the Conservation Commission determines that sole reliance on wetland indicator plants will yield an accurate delineation.
 - (b) When the boundary is not presumed accurate as described in (3)(a)(1.-2.) or to overcome the presumption, credible evidence shall be submitted by a competent source demonstrating that the boundary of Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. The Conservation Commission must evaluate vegetation and indicators of saturated or inundated conditions if submitted by a credible source, or may require credible evidence of saturated or inundated conditions sufficient to support wetland indicator plants, which shall include one or more of the following:
 - 1. groundwater, including the capillary fringe, within a major portion of the root zone;
 - 2. observation of prolonged or frequent flowing or standing surface water;
 - 3. characteristics of hydric soils.
 - (c) Where an area has been disturbed (e.g., by cutting, filling, or cultivation), the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants, a predominance of wetland indicator plants, or credible evidence from a competent source that the area supported, or would support under undisturbed conditions, a predominance of wetland indicator plants prior to the disturbance or characteristic of hydric soils.
- C. No activity, other than the maintenance of an already existing structure <u>or resource area</u> <u>enhancement</u>, which will result in the building within or upon, removing, filling or altering of a vegetated wetland shall be permitted by the Conservation Commission,

D. No work shall be performed within 50 feet of a vegetated wetland that abuts on an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species.

E. Wetland Replication

(1) Introduction

Notwithstanding the foregoing subsections C. and D., the Commission in its sole discretion may allow work in Vegetated Wetland which results in the loss of up to 5,000 square feet of Vegetated Wetland when such area is replaced in a manner to ensure that the replacement area will provide a viable wetland that replaces the functions and values of the area lost. Detailed project design is required to guarantee that wetland impacts are avoided to the maximum extent possible, to minimize absolutely necessary impacts and lastly, to successfully replicate losses that cannot be avoided. The design of replication areas shall carefully consider and incorporate to the extent practicable the Massachusetts Inland Wetland Replication Guidelines (DEP, 2002). Restoration of a degraded wetland may be accepted by the Commission as satisfying the foregoing replication requirement.

(2) Required design criteria

Projects involving Wetlands Filling and/or permanent Alterations shall meet the requirements of 310 C.M.R. 10.60(3) and 310 C.M.R. 10.55(4) and the following requirements of the Commission:

- (a) The proposed replication area design must be submitted to the Commission for approval as part of the submittal of the project Notice of Intent.
- (b) The replication area must be shown to sufficiently duplicate the functions and values of the wetland proposed to be altered.
- (c) The area of the wetland replication shall be at a 2:1 ratio to that area of wetland loss.
- (d) The type of wetland created shall be similar to that lost in terms of physiology and function (e.g., similar plant species, hydrologic regime, and soils) except where an improvement in physiology and function is proposed.
- (e) The replication area must have similar groundwater and surface elevation as the lost area.
- (f) The replication area must have a similar location relative to the bank as the lost area when replicating bordering vegetated wetland.
- (g) The replication area must have an unrestricted surface hydraulic connection to the same waterbody or waterway as the lost area when replicating bordering vegetated wetland.
- (h) The location of the replication areas must be in the same general area as the lost wetland. The location of replacement wetland areas shall be in the following order of

preference: 1. on site, 2. within the same watershed as the lost area, or 3. within the Town of Arlington.

- (i) The replication area shall be constructed prior to alteration of the existing wetland and during the same growing season. When replication involves transplanting plants and materials from existing wetland to the replicated wetland, the replication area shall be constructed, to the extent possible, immediately after alteration of the existing wetland. When transporting, all care shall be taken to prevent the transporting of invasive plants and invasive materials in soils.
- (j) The proposed replication area must be clearly flagged for Commission site inspection before the Notice of Intent filing.
- (k) The proposal for a replication area (submitted with the Notice of Intent) shall include a detailed plan of the wetland replication showing:
 - (i) cross-section with indication of groundwater level, soil profile and thickness of organic soil in the existing and proposed wetlands;
 - (ii) plant species detail, including number, type and location of species found in the replication area to be altered, and number, types and locations of species to be introduced into the replacement area;
 - (iii) detail of stabilization plans for replication area of Banks;
 - (iv) Wildlife Habitat diversity plan; and
 - (v) any trees over 2" dbh shall be replaced in accordance with Section 24 of these Regulations, "Vegetation Removal and Replacement".
- (1) If, after three growing seasons, the Commission determines that the replication area has not satisfactorily developed into a wetland replacing the wetland area lost, the applicant or owner may be required to submit new plans to successfully replicate said lost wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory replication area has been completed at the end of three growing seasons.

Section 22 - Land Under Water Bodies (Under Any Stream, Pond or Lake)

A. Findings.

- (1) Land under water bodies and waterways is likely to be significant to wildlife, to public and private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution and to the protection of fisheries.
- (2) Where land under water bodies and waterways is composed of pervious material, such land represents a point of exchange between surface water and groundwater.
- (3) The physical nature of land under water bodies and waterways is highly variable, ranging from deep organic soils and fine sedimentary deposits to rocks and bedrock. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients (such as nitrogen and phosphorous) from the surface water above. They also serve as traps for toxic substances (such as heavy metal compounds).

- (4) Land under water bodies and waterways, in conjunction with banks, serves to confine floodwater within definite channel during the most frequent storms. Filling within this channel blocks flows which in turn causes backwater and overbank flooding during such storms. An alteration of land under water bodies and waterways that causes water to frequently spread out over a larger area at a lower depth increases the amount of property which is routinely flooded. Additionally, such alteration results in an elevation of water temperature and a decrease in habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows.
- (5) Land under rivers, streams and creeks that is composed of gravel allows the circulation of cold, well-oxygenated water necessary for the survival of fish species. River, stream and creek bottoms with a diverse structure composed of gravel, large and small boulders and rock outcrops provide escape cover and resting areas for fish species. Such bottom type also provides areas for the production of aquatic insects essential to fisheries.
- (6) Land under ponds and lakes is vital to a large assortment of warm-water fish during spawning periods. Species such as largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieui*), blue gills (*Lepomis marcrochirus*) pumpkinseeds (*Lepomis gibbosus*), black crappie (*Promoxis nigromaculatus*) and rock bass (*Ambloplites rupestris*) build nests on the lake and bottom substrates within which they shed and fertilize their eggs.
- (7) Land within 100 feet of any bank abutting land under a water body is likely to be significant to the protection and maintenance of land under a water body, and therefore to the protection of the interests which these water bodies serve to protect.
- B. Definition, critical characteristics and boundaries.
 - (1) Land under water bodies is the land beneath any creek, river, stream, pond or lake. Said land may be composed of organic muck or peat, fine sediments, rocks or bedrock.
 - (2) The physical characteristics and location of land under water bodies and waterways specified in the foregoing Subsection B(1) are critical to the protection of the interests specified in Subsection A above.
 - (3) The boundary of land under water bodies is mean low water level.
- C. No activity, other than the maintenance of an already existing structure <u>or resource area enhancement</u>, which will result in the building within or upon, or removing, filling, dredging or altering of land under a water body or within 25 feet of land under a water body shall be done without written permission of the Commission.
- D. The Commission may allow activity on land under a water body or within 100 feet of land under a water body if it complies with the following regulations. Any proposed work upon land under a water body or with 100 feet of land under a water body shall not impair the following:
 - (1) The water-carrying capacity within the defined channel, which is provided by said land in conjunction with the banks.
 - (2) Ground and surface water quality and quantity.
 - (3) The capacity of said land to provide breeding habitat, escape cover or food for fisheries.

E. No work shall be performed within 50 feet of land under water bodies that abuts an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program.

Section 23 - Land Subject to Flooding (Bordering and Isolated)

A. Findings.

- (1) Bordering land subject to flooding.
 - (a) Bordering land subject to flooding is an area which floods from a rise in a bordering waterway or water body. Such areas are presumed to be significant to flood control and storm damage prevention and protection of surrounding land and other homes or buildings.
 - (b) Bordering land subject to flooding provides a temporary storage area for floodwater which has overtopped the bank of the main channel of a creek, brook, river or stream or the basin of a pond or lake. During periods of peak runoff, floodwaters are both retained (i.e., slowly released through evaporation and percolation) and detained (slowly released through surface discharge) by bordering land subject to flooding. Over time, incremental filling of these areas causes increases in the extent and level of flooding by eliminating flood storage volume or by restricting flows, thereby causing increases in damage to public and private properties and downstream resource areas.
 - (c) The hydrologic regime, plant community and structure, topography, soil, and proximity to water bodies or vegetated wetlands provide important food, shelter, migratory, and overwintering areas, and breeding for wildlife.
 - (d) The hydrologic regime, surrounding plant community, topography, soil, and proximity to water bodies or vegetated wetlands make bordering land subject to flooding allow vegetation to successfully grow in these areas.
- (2) Isolated land subject to flooding.
 - (a) Isolated land subject to flooding is an isolated depression or a closed basin which serves as a ponding area for runoff or high groundwater which has risen above the ground surface. Such areas are likely to be locally significant to flood control and storm damage prevention. In addition, where such areas are underlain by pervious material they are likely to be significant to public or private water supply and to groundwater supply. Where such areas are underlain by pervious material covered by a mat or organic peat and muck, they are also likely to be significant to the prevention of pollution. Isolated land subject to flooding provides important breeding habitat for amphibians and some rare plants. Isolated land subject to flooding provides a temporary storage area where runoff and high groundwater pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may result in damage to said properties.
 - (b) Isolated land subject to flooding, where it is underlain by pervious material, provides a point of exchange between groundwaters and surface waters. Contaminants introduced into said area, such as road salts, find easy access into the groundwater. Where these conditions occur and a mat of organic peat or muck covers the substrate

of the area, said mat serves to detain and remove contaminants which might otherwise enter the groundwater.

- B. Definitions, critical characteristics and boundaries.
 - (1) Bordering land subject to flooding.
 - (a) Bordering land subject to flooding is an area with low, flat topography adjacent to and inundated by floodwaters rising from brooks, creeks, rivers, streams, pond or lakes. It extends from the banks of these waterways and water bodies; where a bordering vegetated wetland occurs, it extends from said wetland.
 - (b) The topography and location of bordering land subject to flooding specified in the foregoing Subsection B(1)(a) are critical to the protection of the interests specified in subsection A(1) above.
 - (c) The boundary of bordering land subject to flooding is the estimated or observed maximum lateral extent of floodwater which will theoretically result or has resulted from the statistical 1 %-annual-chance-flood (also known as the one-hundred-year-frequency storm).
 - i. Said boundary shall be that determined by reference to the most recently available flood profile data prepared for the Town of Arlington within which the work is proposed under the National Flood Insurance Program (NFIP, currently administered by the Federal Emergency Management agency, successor to the U.S. Department of Housing and Urban Development). Said boundary, so determined, shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other professional competent in such matters.
 - ii. Notwithstanding the foregoing, where NFIP profile data is unavailable or is determined by the Commission to be outdated, inaccurate or not reflecting current conditions, the boundary of bordering land subject to flooding shall be the maximum lateral extent of floodwater which has been observed or recorded or the Commission may require the applicant to determine the boundary of Bordering Land Subject to Flooding by engineering calculations which shall be:.
 - 1. based upon a design storm of 8.48 inches of precipitation in 24 hours (from "Cornell" atlas):
 - based upon the standard methodologies set forth in U.S. Soil Conservation Service Technical Release No. 55, Urban Hydrology for Small Watersheds and Section 4 of the U.S. Soil Conservation Service, National Engineering Hydrology Handbook; and
 - 3. prepared by a registered professional engineer or other professional competent in such matters.
 - (2) Isolated land subject to flooding.
 - (a) Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water. Isolated land subject to flooding may be underlain by pervious material, which in turn may be covered by a mat of peat or muck.
 - (b) The characteristics specified in the foregoing Subsection B(2)(a) are critical to the protection of the interests specified in Subsection A(2) above.

- (c) The boundary of isolated land subject to flooding is the perimeter of the largest observed or recorded volume of water confined in said area.
- C. No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, or removing, filling, dredging or altering of, land subject to flooding shall be conducted without written permission of the Conservation Commission.
- D. The Commission may permit activity on land subject to flooding provided it shall not result in the following:
 - (1) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area;
 - (2) Adverse effect on public and private water supply or groundwater supply, where said area is underlain by pervious material;
 - (3) An adverse effect on the capacity of said area to prevent pollution of the groundwater, where the area is underlain by pervious material which in turn is covered by a mat of organic peat and muck.

Any such activity shall provide compensatory flood storage for all flood storage volume that will be lost at each elevation. Compensatory flood storage shall be at a 2:1 ratio, minimum, for each unit volume of flood storage lost at each elevation. Compensatory flood storage shall mean a volume not previously used for flood storage, shall have an unrestricted hydraulic connection to the same waterway or water body, and, with respect to waterways, shall be provided within the same reach of the river, stream, or creek. No new parking areas or garages shall be used as compensatory flood storage. The Commission has found that use of such areas or garages results in a significant or cumulative effect upon the resource area values protected by the Bylaw, and has found that these facilities can result in the uncontrolled acute or chronic release of these harmful materials into the resource areas protected by the Bylaw. The Commission has also found that using these structures for flood storage can result in the damage of vehicles and property under flooding conditions.

E. No work shall be performed within 50 feet of land subject to flooding that abuts an estimated habitat area as designated on the most current map prepared by the Massachusetts Natural Heritage and Endangered Species Program unless the Applicant can demonstrate by a preponderance of credible evidence that the work will not have any short term or long term adverse effect on the resource area values protected by the Bylaw.

Section 24 - Vegetation Removal and Replacement

A. Findings: Vegetation in a resource area protected by the Bylaw is significant for wildlife, wildlife habitat and water quality. In addition, vegetation controls flood and storm damage. Vegetation provides food, shelter, socialization, shade, water detention, sediment control, bank stabilization, biodiversity, pollutant uptake, evapotranspiration of water, aesthetics, and atmospheric purification. In addition, plant size ordinarily is proportional to habitat value; i.e., large wooded trees are of greatest habitat value, followed by bushes, and then ground cover. Thus, an adequate quantity of vegetation must be maintained so that resource areas protected by the Bylaw can provide the resource area values protected by the Bylaw, including, but not

limited to: flood control, storm damage prevention, pollution abatement, wildlife protection, aesthetic value, and recreation.

- B. No vegetation in a resource area protected by the Bylaw shall be damaged, extensively pruned, or removed without written approval by the Commission and in-kind replacement. Extensive pruning is defined as removal of 20% or more of limbs or growth. For extensive pruning or removal of vegetation because of an Imminent Risk to Public Health and Safety, in-kind replacement shall be to the extent practicable as determined by the Commission (See Section 9 of these Regulations for Emergency Certification).
- C. "In-kind replacement" shall refer to a combination of species type and surface area as defined by the area delineated by the drip line of the affected plant(s). "In-kind" means the same type and quantity of plant species that was removed, extensively pruned, or damaged, unless compelling evidence is presented in writing that explains why the resource area values under the Bylaw are promoted through an alternative proposal-(such as biomass equivalent), and planted within the same resource area or another resource area located in close proximity on the project site. Notwithstanding the foregoing, only non-invasive plant species shall be planted as replacements.
- D. The criteria for removal of vegetation follow. In all instances, the reasons for removal must be expressed in writing before the removal. In administering this standard, the Commission shall consider species selection, location, and timing of the plantings.
 - (1) Health of Vegetation
 - Vegetation in a state of irreversible decay, or undesirable vegetation present as a result of unintentional lack of maintenance may be offered as a reason(s) for removal.
 - (2) Bank or Slope Stabilization A bank or slope stabilization plan requires the restructuring of soils occupied by vegetation.
 - (3) Invasive Species
 - The vegetation being removed is an aggressive, invasive, or non-native species as confirmed by wetlands scientist or as listed on a wetlands plant list acceptable to the Commission, such as, but not limited to that published by the United States Fish and Wildlife Service.
 - (4) Ecological Restoration
 - The vegetation is being removed as part of a project whose primary purpose is to restore or otherwise improve the natural capacity of a resource area to protect and sustain the interests of the Bylaw; also called Resource Area Enhancement.
 - (5) Vegetation Replacement
 - The vegetation is being removed and replaced elsewhere on the project site or within the same resource area only if such removal and replacement does not decrease the resource area's contribution to the resource area values protected by the Bylaw.
 - (5)(6) Imminent Risk to Public Health and Safety
 - The vegetation is an imminent risk to public health or safety or property as confirmed in writing and submitted to the Commission by the Arlington Tree Warden, Fire Department Representative, Public Safety Officer, or a certified arborist.

E. Application for Removal. For all projects, the application for vegetation removal shall be submitted as part of the application for permit or Notice of Intent as described by the Bylaw and these regulations. At a minimum, the application will include:

(1) Narrative

The narrative shall describe the existing conditions, the proposed planting plan, the list of existing and proposed species, the size of existing and proposed species, and number of plants before and after the revegetation event. The narrative shall also provide the rationale for the removal, by addressing one or more of the criteria D1 through D6 above, and discuss the proposed maintenance plan (see (7) below).

(2) Affirmation of the Revegetation Activities

All plans for revegetation must be accompanied by written testimony and scaled diagram from a certified arborist or wetland scientist or landscape architect. At a minimum, this document must include the following information:

- a. Is the vegetation removal necessary? (See D. above)
- b. How much surface area of the vegetation will be removed (ft²-based on drip line)?
- c. How many individual plants will be removed by species; *i.e.*, is the species list submitted with the NOI correct?

(3) Planting Plan

The <u>proposed</u> planting plan must be drawn to scale and identify properly the resource area and buffer zone and the project site. It must include the locations of each replacement species <u>and the number of each species proposed for planting (in table form)</u>.

The planting plan and procedures shall comply with the American Standards for Nurserymen, Inc. or equivalent. It must also include the location of the erosion control devices used during the restoration event. A brief narrative must accompany this planting plan describing the storage location of all motorized equipment.

The planting plan shall show the estimated tree canopies after 15 years of growth, the specific names, sizes and locations of trees to be planted, and the total area of square feet of the area shaded by tree canopies. In determining the shaded area, measure the shaded area assuming that the shaded area is only that area directly under the drip line

(4) Existing Species List

Each species existing before the restoration shall be listed in terms of area of coverage (ft²) and number of individual plants and either height or dbh as specified in the tables below.

(5) Replacement Species List

The replacement of vegetation shall be according to the following tables (derived from the American Standards for Nurserymen, Inc.) <u>-unless the Applicant proves that the amount of replacement vegetation will not survive or contribute in the long-term to resource area values.</u> A rationale for the species and size choice must be provided if the replacement is not "in-kind".

Native species are the preferred; invasive species are not allowed.

Replacement plant materials shall conform to the requirements described in the latest edition of American Standard for Nursery Stock, which is published by the American Association of Nurseryman ("AAN").

Replacement size shall be most common available substantial size.

Vegetation replacement is not considered successful until the replacement plants have survived three full growing seasons.

For extensive pruning or removal of vegetation because of an Imminent Risk to Public Health and Safety, in-kind replacement shall be to the extent practicable as determined by the Commission (See Section 9 of these Regulations for Emergency Certification).

a. For Deciduous Trees:

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Existing	Replacement				
trunk in dbh	Quantity	caliper	gallon/ball & burlap	Height ←	Formatted: Footer
1 to 2 inch	1	2 inch	#10 or #25/16 24	8 10 feet or 12	Formatted: Footer
			inch diameter	14 feet	
>2 to 3.5 inch	1	2 to 3.5 inch	24 to 38 inch dia.	12 to 16 feet⁴	Formatted: Footer
>3.5 to 6 inch	2	2 to 3.5 inch	24 to 38 inch dia.	12 to 16 feet⁴	Formatted: Footer
>6 to 10 inch	3	2 to 3.5 inch mmission to reach equ	24 to 38 inch dia.	12 to 16 feet⁴	Formatted: Footer
> 10 inch	Formatted: Footer				
2. Small Upright trees and multi stem trees (e.g., crabapples, clump form birches)					Formatted: Footer, Indent: Left: 0", Tab stops: Not at -1"

Existing	Replacement				-
Height	Quantity	branching	gallon (ball & burlap)	Height	•
4-feet	1	5 or more	#1 (10 14 in. dia.)	3 4 ft.	—
5 feet	1	6 or more	#2 #5 (16 in. dia.)	5 6 ft.	-
6 feet	1	7 or more	#5 (16 in. dia.)	6 7 ft.	+
> 6 feet	Caliper shall be used according to table above for Shade Trees (for 2 inch				
	caliper trees or larger				

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b. For Evergreen Trees:

Existing	Replacement			
Height	Quantity	size/width	gallon/ball & burlap	Height ←
2 feet	1	15 21 in. spread	#3 (12 in. dia.)	2 ft. ←
3 4 feet	1	24 35 in. spread	#5 (22 27 in. dia.)	3 4 ft. ←
5 6 feet	1	3 4 ft. spread	#7 (30 34 in. dia.)	5 6 ft. ←

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DRAFT - November 11, 2018

7 – 8 feet	1	w/ ratio 5:3 spread	#n/a (34 - 50 in. dia.)	7 - 8 ft.	-	Formatted: Footer
> 8 feet			o reach equivalent ratio-			Formatted: Footer
	spread of properly	, grown material; equi	valent shall not be less t	han 5:3 heigl	nt to	
	spread ratio.					
Existing	Replacement				•	Formatted Table
Trunk (dbh)	Quantity					

Existing	Replacement
Trunk (dbh)	Quantity
3 to 8 inches	<u>1</u>
8 to 20 inches	<u>2</u>
> 20 inches	<u>3</u>

eb. For All Trees:

- If a plant is well grown with a single stem, well shaped well-shaped and bushy, and has sufficient well-spaced side branches to give it weight and good bud qualities, it is an acceptable plant.
- ii. On multi-stem trees, height shall be defined as the measurement taken from the ground level to the average uppermost point of grown of the plant.
- iii. All replacement plants shall have ball sizes which are of a diameter and depth to encompass enough of the fibrous and feeding root system as necessary for the fully recovery of the plant once planted.
- iv. Sapling trees shall include deciduous trees with a dbh of 1 inch and less; evergreens of 2 feet or less and shall be replaced at the discretion of the Commission so as to reach an equivalent area of coverage and soil retention.

dc. For Bushes and Shrubs:

The replacement of bushes and shrubs shall be with bushes and shrubs of equivalent size. For bushes, the replacement must be well grown with a single stem, well shapedwell-shaped and bushy, and has sufficient well-spaced side branches to give it weight and good bud quality. (This is AAN definition of an acceptable shrub.)

- (6) Rationale for Removal Describe why the interests of wetlands protection are advanced by the revegetation plan.
- (7) Maintenance Plan Vegetation replacement is not considered successful until the replacement plants have survived three full growing seasons. The maintenance plan shall describe how the restoration will be evaluated annually for three years and reported to the Commission. The Commission reserves the right to require a revised replanting plan, or additional plantings on an annual basis in the event that the revegetation plants decay or die.
- F. The Commission may require one or more of the following measures to protect vegetation during work:

- (1) Tree protection fencing Prior to commencing work, four (4) foot-high snow fencing shall be installed and secured with wooden stakes (2" x 4" or 2" x 3") or 6-foot steel channel posts so as to create an enclosure at the dripline of tree(s) or other distance as the site conditions allow to be protected. Such fencing shall be securely erected, be vertically plumb and be maintained for the duration of the project and shall protect individual trees or groups of trees.
- (2) Tree protection blanket "BarkSavers" or similar armored blankets shall be installed and maintained according to product specifications.
- (3) No existing trees shall be used for crane stay, guys or other fastening.
- (4) Vehicles shall not be parked below the canopy of any existing tree or where damage may result to existing trees.
- (5) Construction materials shall not be stored beneath existing trees.
- (6) Following completion of work, have a certified arborist monitor the health of trees on site for possible damage and take measures to repair damage.
- (7) Prior to work, preparation of a tree protection plan showing summary of all trees on site (including dbh, species, extent of canopy, roots and health) and specifying whether each tree shall be saved or lost.
- G. The Commission may require the placement of permanent bounds (granite or metal) to demarcate all or part of a resource area or vegetation mitigation area.
- H. The requirements of this section shall be met commensurate with the nature, scope, type, and cost of the proposed project or activity.

Section 25 – Adjacent Upland Resource Area

A. Findings

- (1) The Adjacent Upland Resource Area usually is significant to wildlife, plant or wildlife habitat, to public and private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to erosion control and sedimentation control, and to natural character and recreation.
- (2) Trees in the Adjacent Upland Resource Area provide important functions not provided by any other plant type. Trees provide shade to moderate water temperatures, levels of dissolved oxygen and water flow. They serve as windbreaks to moderate wind stress and shear during storms, and provide nesting, roosting and perching areas for birds, and other wildlife. The transitional assemblage of trees, shrubs and groundcover (containing both wetland and upland elements) frequently found in Adjacent Upland Resource Areas has been found significant to the support of a greater number of native and specialist wildlife species in the interior of resource areas, which they border. Trees and other vegetation, if undisturbed or minimally disturbed, slow the rate of surface runoff providing flood control and reducing down-gradient storm damage.
- (3) Lands within the Adjacent Upland Resource Area are best left in an undisturbed and natural state.
- (4) There is overwhelming scientific consensus that significant physical, chemical, or biological alterations to Adjacent Upland Resource Areas will have significant physical, chemical, or biological impacts on associated or adjacent wetland resource areas such as

Regulations for Wetlands Protection

DRAFT - November 11, 2018

banks, creeks, streams, rivers, ponds, lakes, and wetlands. Adjacent Upland Resource Areas are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resource areas protected by the Bylaw have a high likelihood of adverse impact upon those areas, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction activities, impervious surfaces, and use can include, without limitation, erosion, siltation, loss of groundwater recharge, loss of flood control or storm damage prevention, poor water quality, and harm to wildlife and wildlife habitat. The ability of the Adjacent Upland Resource Area to protect a wetland resource, and to provide habitat, increases with buffer width and continuity.

(5) Generally, vegetated buffers within the Adjacent Associated Upland Resource Area and next to the adjacent resource area of less than 25 feet wide are ineffective in protecting adjacent wetlands or providing wildlife habitat functions. Vegetated buffers often larger than 25 feet are necessary to provide wildlife habitat and to protect adjacent resource areas wetlands from continuing activities such as inputs of sediments and nutrients, to protect from direct human disturbance, to protect sensitive species from adverse impacts, and to protect adjacent wetlands resource areas from the adverse effects of changing water quality, including but not limited to nutrient concentrations, temperature, salinity and dissolved oxygen concentrations.

B. Definitions and Boundary

- (1) The Adjacent Upland Resource Area is an-the area adjacent to a resource area specified in Section 2, A(1) through (4) and is the land within 100 feet (measured horizontally) of any of the aforesaid resource areas.
- (2) The boundary of the Adjacent Upland Resource Area is the distance measured horizontally from the resource area specified in Section 2, A(1) through (4) to 100 feet landward of said resource.
- (3) The Adjacent Upland Resource Area is divided into two [SDC: aren't we defining 3 zones by adding the "No Structure Zone"?] zones, the No Disturbance Zone and the Restricted Zone.
- 1. The No-Disturbance Zone is measured 25 feet horizontally from the resource area specified in Section 2, A(1) through (4).
- 2. The Restricted Zone is measured 75 feet horizontally from the No Disturbance Zone to the outer boundary of the Adjacent Upland Resource Area [SDC: I would move the No Structure Zone above the Restricted Zone since it is closer to the resource area]

C. Alternatives to Work in Adjacent Upland Resource Area. A growing body of research evidence suggests that even "no disturbance" areas reaching beyond 25 feet from wetlands, streams, rivers, and other water bodies may be insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of wetlands. Thus, work and activity the Adjacent Upland Resource Area shall be avoided and discouraged and reasonable alternatives pursued.

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Regulations for Wetlands Protection

DRAFT - November 11, 2018

Only when the Applicant proves through a written alternative analysis that reasonable alternatives are not available or practicable, the Commission (and not the Applicant) shall designate areas of the Adjacent Upland Resource Area to be suitable for no, temporary, limited, or permanent disturbance as appropriate and consistent with this Section depending on the following, particular characteristics of the -Adjacent Upland Resource Area:

- i. slope
- ii. soil characteristics
- iii. drainage patterns
- iv. extent and type of existing vegetation
- v. extent and type of invasive vegetation
- vi. amount of impervious surface
- vii. wildlife and wildlife habitat
- viii. intensity and extent of use
- ix. intensity and extent of adjacent and nearby uses
 - x. capacity to provide resiliency to climate change

This approach is intended to allow flexibility for use of property while maintaining adequate levels of protection of the resource values protected by the Bylaw.

- D. No Disturbance Zone. No activities or work, other than passive passage and resource area enhancement, are permitted within the first 25 feet of the Adjacent Upland Resource Area (measured horizontally from a resource area specified in Section 2, A(1) through (4). Except as part of Resource Area Enhancement or an Ecological Restoration Project, nNo vegetation may be disturbed, and leaf litter and natural debris shall remains in place, etc. This e-No-Disturbance area shall should at a minimum contain the same amount of area of undisturbed and natural vegetation remain unchanged from its pre-project state. A previously disturbed or previously developed No-Disturbance area shall be restored to a naturally vegetated state to the greatest extent practicable.
- E. No new structure(s) shall be placed in the first 50 feet of the Adjacent Upland Resource Area (measured horizontally from a resource area specified in Section 2, A(1) through (4)).

F. Impervious surface.

- (1) The total area of impervious surface within the Adjacent Upland Resource Area shall not increase more than 10% or 100 square feet, whichever is less, over the existing total area of impervious surface within the Adjacent Upland Resource Area.
- (2) Impervious surfaces shall not intrude farther into the Adjacent Upland Resource Area than pre-project conditions unless the Commission in its sole discretion determines that the total area of impervious surface is significantly decreased or other mitigation is provided that serves to protect the resource area values. Impervious surface shall be kept as close as possible to the outer (upland) boundary of the Adjacent Upland Resource Area.

D. Restricted Zone. A growing body of research evidence suggests that even "no disturbance" areas reaching beyond 25 feet from wetlands, streams, rivers, and other water bodies may be

Comment [SDC1]: Should we insert "new" with the understanding that existing structures may remain in-place?

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insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of wetlands. Thus, work and activity within that portion of the Adjacent Upland Resource Area beyond the No Disturbance Zone shall be avoided and discouraged and reasonable alternatives pursued.

When the Applicant proves that reasonable alternatives are not available or practicable, the Commission shall designate areas of the Adjacent Upland Resource Area to be suitable for no, temporary, limited, or permanent disturbance as appropriate depending on the following, particular characteristics of the Restricted Zone:

i. slope

soil characteristics

i. drainage patterns

extent and type of existing vegetation

v. extent and type of invasive vegetation

amount of impervious surface

vli. wildlife and wildlife habitat

i. intensity and extent of use

intensity and extent of adjacent and nearby uses

This approach is intended to allow maximum flexibility for property use while maintaining adequate levels protection of the resource values protected by the Bylaw.

(1) Minimal Disturbance Area. This is an area within the Restricted Zone of the Adjacent Upland Resource Area in which virtually no activities or work, other than passive passage, are permitted. No vegetation may be disturbed, and leaf litter and debris shall remain in place. This Minimal Disturbance Area should remain unchanged from its pre-project condition.

(2) Temporary Disturbance Area. This is an area within the Restricted Zone of the Adjacent Upland Resource Area where temporary disturbance for a limited period of time is permitted, such as for re-grading or travel by heavy machinery. Once the activity is completed, however, the area shall be allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing. The Conservation Commission shall establish specific time frames and conditions for allowing temporary disturbances, as well as setting criteria for assessing the successful return of the Adjacent Upland Resource Area to natural functions.

(3) Limited Disturbance Area. This is an area within the Restricted Zone of the Adjacent Upland Resource Area where a limited set of activities and work is permitted in perpetuity. For example understory clearing of poison ivy might be allowed, but no clearing of overstory and no planting of lawn. Limited (sustainable) harvesting of wood, composting of brush, and storing firewood are other examples of limited activities that might be allowed.

(4) Permanent Disturbance Area. This is an area within the Restricted Zone of the Adjacent Upland Resource Area in which most, if not all, legal activities and permanent disturbances are permitted. Houses, porches, driveways, gardens, and lawns in the Adjacent Upland Resource

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represent permanent disturbance areas. Nevertheless, within the context of permanent disturbance, the Conservation Commission may set specific temporary or perpetual conditions prohibiting or restricting those forms of work and activities in the Adjacent Upland Resource Area deemed potentially harmful to the wetland resource area values protect by the Bylaw, such as the use of herbicides and pesticides, use of interceptor drains, or installation of in ground sprinkler systems for irrigating areas in the adjacent upland resource.

The Commission may require the placement of permanent bounds (granite or metal) to demarcate all or part of the Adjacent Upland Resource Area.

[SDC does this also need to be referenced in the Restricted Zone definitions, above, too?]

EG. The following activities may not be conducted in any portion of the Adjacent Upland Resource Area: changing of oil, refueling, or damage to other vegetation not scheduled for removal.

H. Certain Proposed Activities in Adjacent Upland Resource Area.

The Adjacent Upland Resource Area should be left intact in a naturally vegetated state to the maximum extent practicable and as provided in these regulations. However there are some activities that may be permitted by the Commission that are not likely to have a significant or cumulative effect on the resource area values of the Bylaw, provided the other provisions of these Regulations are met. These proposed activities must be reviewed by the Conservation Commission Administrator to determine the appropriate permitting procedures, and to determine what, if any, mitigation is required. These activities are:

- (1) Fencing, provided it will not constitute a barrier to wildlife movement;
- (2) Plantings of native species of trees, shrubs, or groundcover, but excluding lawns that would require mowing, regardless of species composition;
- (3) The conversion of impervious surfaces to vegetated surfaces, provided erosion and sedimentation controls are implemented during construction;
- (4) Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes (e.g., installation of monitoring wells, exploratory borings, sediment sampling and surveying);
- (5) Nonpermanent wildlife watching blinds; or
- (6) Short-term scientific or educational activities.

Section 26 – Vernal Pool and Its Associated 100-Foot No-Disturbance Zone

A. Findings

(1) Vernal Pools and their associated 100-foot No-Disturbance Zones are likely to be significant to the protection of wildlife habitat and rare plant and animal habitat. Vernal Pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are completely dependent on Vernal Pools and their associated habitat for their survival. Areas in the immediate vicinity of the Vernal Pool (i.e., 100-foot No-Disturbance Zone) provide these species with important non-breeding

habitat functions, such as migratory pathways, feeding, shelter, and over-wintering sites. Many other species utilize Vernal Pools and their associated 100-foot No-Disturbance Zones for breeding and non-breeding functions, although such species are not limited to this type of wetland. The protection of Vernal Pools and their associated 100-foot No-Disturbance Zones are essential for the survival of wildlife species that depend on these unique and threatened resource areas. Vernal Pools need not be state-certified in order to be protected under the Bylaw or these Regulations.

(2) The extreme edges of vernal pool habitat represent one of the most ecologically valuable portions of these habitats. Shallow water at the edges of a pool generally are the first to thaw in the spring. This provides early access to the pool for the earliest breeding species. The shallow water zones also tend to be significantly warmer than the deeper portions of a vernal pool throughout the spring. Egg masses of early breeding amphibians benefit from the warmer water temperatures at the pool edges that promote rapid egg development.

B. Definition, Critical Characteristics and Boundary:

- (1) Vernal Pools exhibit a tremendous variation in physical, geographic, hydrologic and vegetative conditions, and therefore, for the purposes of these Regulations, these conditions are not considered reliable criteria for their identification. A Vernal Pool is a temporary freshwater body, which, in most years holds water for a minimum of two (2) months and is free of established, reproducing fish populations, and is protected by these Regulations if it meets any of the following criteria:
 - (a) The Vernal Pool contains evidence of the presence of any one (1) of the following obligate indicator species: Spotted Salamander, Blue-Spotted Salamander, Jefferson Salamander, Marbled Salamander, Wood Frog or Fairy Shrimp, or;
 - (b) In the absence of any obligate indicator species, the Vernal Pool contains evidence of two (2) of any of the following facultative indicator species: Spring Peeper, American Toad, Green Frog, Pickerel Frog, Gray Tree Frog, Four-Toed Salamander, Spotted Turtle, Caddisfly larvae or cases of Caddisfly larvae, Dragonfly or Damselfly larvae or shed skins (exuvia) of Dragonfly or Damselfly larvae, adults, juveniles or shells of either Fingernail Clams or Amphibious, air-breathing Snails.
- 2. The boundary of vernal pool.

The boundary of vernal pool is the lower of:

- (a) the maximum elevation of a topographic depression that holds water for a minimum of two (2) continuous months each year; or
- (b) the maximum observed or recorded water level in a topographic depression. The boundary of vernal pool may be defined differently for the purpose of state or federal protection. The boundary of vernal pool is not established when a vernal pool certification number is issued by the Commonwealth.

C. Timing of Evidence Collection:

Many of the indicators of Vernal Pool habitat are seasonal. For example, certain salamander egg clusters are found only between late March and late May; Wood Frog chorusing occurs only between late March and late May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of Vernal Pool habitat, the Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visit(s) as necessary to confirm the evidence.

D. Presumptions of Significance for 100-foot No-Disturbance Zone:

Where a proposed activity involves the removing, filling, dredging, or altering of a Vernal Pool or its 100-foot No-Disturbance Zone, the Commission shall presume that the Vernal Pool and its 100-foot No-Disturbance Zone is significant to the protection of wildlife habitat and rare plant and animal habitat.

E. Performance Standards for 100-foot No-Disturbance Zone:

Unless the presumption set forth in Section 21.D of these Regulations is overcome, the following standards shall apply to Vernal Pools and their 100-foot No-Disturbance Zones:

- (1) 100-foot No-Disturbance Zone: No activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool, or in the case of a wetland resource area that encompasses the pool, within 100 feet of the delineated edge of said wetland resource area. Prohibited activities include, but are not limited to, grading, landscaping, vegetation control, pruning, cutting, filling, excavation, roadway construction and/or driveway construction.
- (k) No-Disturbance Zone Demarcation: To maintain the perpetual integrity of the 100-foot No-Disturbance Zone and to ensure that there will be no encroachments into this Zone by the applicant or future owners of the subject property, the Commission may require the No-Disturbance Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather resistant material (i.e. granite or concrete), and the Commission shall determine their number, location and size. The Commission may require the maintenance of such markers in any certificate of compliance issued for the project.

<u>Section 27 – Riverfront Area</u>

See 310 C.M.R. 10.58 (the Massachusetts Department of Environmental Protection's Wetlands Regulations pertaining to Riverfront Area).

Section 28 - Variances

A. The Conservation Commission may, in its discretion, grant variances from the operation of one or more of the provisions of the Bylaw, or the rules and regulations promulgated thereunder, Such variances are intended to be granted only in rare and unusual cases and upon a showing of clear hardship relating to the subject premises if the requested relief is not granted.

B. The standards as set forth herein shall be the sole basis upon which a variance shall be granted.

- C. Applicants shall file a written request for variance at the same time as <u>or after</u> an application (Notice of Intent) for a permit <u>or request for determination</u> is filed with the Commission <u>and prior to the close of the hearing on said application</u>. Such variance request shall be made in writing and shall be a separate writing from the application or request forms.
- D. At any time subsequent to filing of the variance request, but in no event less than ten calendar days prior to the date of commencement of the public hearing at which the variance request is to be considered, the applicant or his or her or its representative shall submit to the Commission and copies to each Commission member (including associate member) a written statement in support of the variance request. Such written statement shall include but not be limited to the following items:
 - (1) A brief statement of the relief sought;
 - (2) A description of all reasonably identifiable alternatives to the applicant's proposal that were considered by the applicant and that would avoid or minimize the necessity of the requested relief, along with the reasons why such alternatives were deemed to be inadequate, unworkable or inadvisable;
 - (3) A statement of all efforts that will be undertaken to minimize impact upon resource areas and buffer zones arising out of the work proposed;
 - (4) Detailed plans for any mitigation measures proposed;
 - (5) Adequate engineering and expert evidence to permit the Commission to evaluate the basis for the applicant's contentions in support of the variance requested; and
 - (6) Any and all relevant information which the applicant wishes the Commission to consider in deliberating the variance request.
- E. A variance may be granted only for the following reasons and upon the following conditions:
 - (1) The Conservation Commission may grant a variance upon a clear and convincing showing by the applicant that any proposed work, or its natural and consequential impacts and effects, will not have any adverse effect upon any of the interests protected in the Bylaw, and that there are no reasonable conditions or alternatives that would allow the work to proceed in compliance with these regulations and the Bylaw. It shall be the responsibility of the applicant to provide the Conservation Commission with any and all information that the Commission may request orally or in writing, in order to enable the Commission to ascertain such adverse effects, and the failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for variance.
 - (2) The Conservation Commission may grant a variance from these rules and regulations when necessary to avoid so restricting the use of the property as to constitute a taking of private property without compensation. The Commission may request an opinion from Town Counsel or other legal consultant at the expense of the applicant as to whether the application of the Bylaw to a particular case will result in a taking of property without compensation.

Section 29 - Areas of Critical Environmental Concern

Regulations for Wetlands Protection

DRAFT - November 11, 2018

A. Any areas within the Town of Arlington which have been designated as Areas of Critical Environmental Concern by the Secretary of Energy and Environmental Affairs, Commonwealth of Massachusetts, are so designated due to the particularly unique environmental factors that affect such areas and that highlight the unique importance of each area so designated.

B. As a result of such designation, it is incumbent upon the Commission to be even more diligent in its review of projects proposed within such areas. The highest standards of scrutiny as to the impact of any proposal are required shall be exercised by the Commission.

C. Further, close scrutiny shall be given by the Commission to any proposals involving an application of new pavement or newly installed other impervious materials within any area less than 100 feet from bordering vegetated wetland, bank, beach, and meadow.

Section 30 - Climate Change Resiliance Wildlife Habitat

<<SC to provide text>>

The Town of Arlington accepts and adopts the current definitions, requirements, definitions definitions, requirements, definitions definitions and <u>regulatory restrictions</u> for wildlife habitat as specified in the Massachusetts Wetlands Regulations, 310 CMR 10.00 for jurisdictional wetlands.

Activities which alter the Wildlife Habitat of any Resource Area in a manner that is likely to impact the breeding success of wildlife are prohibited.

Section 31 – Climate Change Resilience

Integrated Climate Change Strategy for the Commonwealth," states that conservation commissions can play an important role in protecting and promoting the value and function of wetlands in the context of climate change. The Town of Arlington is developing tools to assess local vulnerabilities to climate change impacts and to the extent practicable. The Applicant should integrate considerations of adaptation planning into their project to promote climate change resilience so as to protect and promote resource area values into the future. in wetlands permitting. These considerations are especially important in Land Subject to Flooding (floodplain) and Riverfront Areariverfront jurisdictional areas, which may be directly impacted by extreme weather events expected to be more prevalent or more intense due to climate change in the Northeast, in surface runoff of pollutants, and in wildlife habitat considerations, in terms of due to changes in temperature. affecting habitat values.

The Town has adopted strict. The standards for work in the Adjacent Upland Resource Area definitions and limitations on disturbance in the buffer zone as described in Section 25, which will partially help mitigate the effects of climate change on the resource areas. In consideration of Section 25 and other requirements of these regulations, the Applicant shall following should be addressed to describe the project's adaptation to potential climate change impacts by addressing the following:.

 Describe project design considerations to limit storm and flood damage during extended periods of disruption as might be expected in extreme weather events. **Comment [SDC2]:** I recommend we leave in the Wildlife Habitat section and use wording similar to Reading Bylaw as I inserted.

- Describe project stormwater surface runoff, which may increase due to extreme weather
 events, and how this will be managed / mitigated to prevent pollution (including nutrients
 from fertilizers, roadway runoff, etc.) from entering the resource area with consideration
 of eliminating impervious surfaces as feasible.
- Describe project vegetation / planting plans and other measures to improve the resiliency
 of the wildlife habitat of the resource area to withstanding potential temperature and
 rainfall changes (draought and excess) due to climate change.

The following references may be helpful in evaluating Climate Change Resiliency of the proposed project:

<u>Cambridge, MA, Climate Change Vulnerability Assessment (CVAA) Report – Part 1 & Part 2 (November 2015 & February 2017):</u>

https://www.cambridgema.gov/CDD/Projects/Climate/climatechangeresilianceandadaptation
Town of Arlington web page for Municipal Vulnerability Preparedness updates on climate
change resilience measures: https://www.arlingtonma.gov/home

<u>Municipal Vulnerability Preparedness (MVP): https://www.mass.gov/service-details/mvp-program-information</u>

Section 31-32 – Ecological Restoration Projects

The Commission may allow ecological restoration projects as defined and provided in 310 CMR 10.00.

Section 32-33 - Stormwater Management

A. Work or activity specified in a request for determination of applicability or an application for a permit and subject to the Bylaw shall meet, at a minimum and to the extent practicable, the best management practices for stormwater management as set forth in the Stormwater Standards of the Massachusetts Department of Environmental Protection. The Commission may in its sole discretion require the applicant to provide a runoff plan and calculations using the "Cornell" method, and based on the ten-year, fifty-year and one-hundred-year-flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes.

B. The requirements of this section shall be met commensurate with the nature, scope, type, and cost of the proposed project or activity

Section 3334 - Severability; Compliance With Court Decisions

A. The invalidity of any section or provision of the Bylaw or of these regulations shall not invalidate any other section or provisions thereof, nor shall it invalidate any permit which previously has been issued.

B. If any Court of the Commonwealth shall invalidate any provisions of the Bylaw or of these regulations, the Conservation Commission may promulgate additional rules and regulations or present to the next Town Meeting after such invalidations, amendments to the Bylaw or

Regulations for Wetlands Protection

DRAFT - November 11, 2018

regulations which are designed to comply with any Court decision invalidating such provisions or regulations, as the case may be.

Section 34-35 - Effective Date

The effective date of these rules and regulations shall be January 4, 2001, and the provisions of these rules and regulations shall apply to all work performed, and all applications or requests for determination of applicability received on or after that date.

[Editor's notes: Regulations first approved January 4, 2001; revised: June 2001, September 20, 2001; February 2005; April 7, 2005; September 16, 2010; January 20, 2011; and June 4, 2015 and , 2017.]

Section 31 – Climate Change Resilience

In consideration of Commonwealth of Massachusetts Executive Order 569, "Establishing an Integrated Climate Change Strategy for the Commonwealth," states that conservation commissions can play an important role in protecting and promoting the value and function of wetlands in the context of climate change. The Town of Arlington is developing tools to assess local vulnerabilities to climate change impacts and to the extent practicable. The Applicant should integrate considerations of adaptation planning into their project to promote climate change resilience so as to protect and promote resource area values into the future. These considerations are especially important in Land Subject to Flooding (floodplain) and Riverfront Area, which may be directly impacted by extreme weather events expected to be more prevalent or more intense due to climate change in the Northeast, in surface runoff of pollutants, and in wildlife habitat due to changes in temperature.

The standards for work in the Adjacent Upland Resource Area as described in Section 25 will partially help mitigate the effects of climate change on the resource areas. In consideration of Section 25 and other requirements of these regulations, the Applicant shall describe the project's adaptation to potential climate change impacts by addressing the following:.

- Describe project design considerations to limit storm and flood damage during extended periods of disruption as might be expected in extreme weather events.
- Describe project stormwater surface runoff, which may increase due to extreme weather events, and how this will be managed / mitigated to prevent pollution (including nutrients from fertilizers, roadway runoff, etc.) from entering the resource area with consideration of eliminating impervious surfaces as feasible.
- Describe project vegetation / planting plans and other measures to improve the resiliency of the wildlife habitat of the resource area to withstanding potential temperature and rainfall changes (drought and excess) due to climate change.

The following references may be helpful in evaluating Climate Change Resiliency of the proposed project:

Cambridge, MA, Climate Change Vulnerability Assessment (CVAA) Report – Part 1 & Part 2 (November 2015 & February 2017):

https://www.cambridgema.gov/CDD/Projects/Climate/climatechangeresilianceandadaptation
Town of Arlington web page for Municipal Vulnerability Preparedness updates on climate change resilience measures: https://www.arlingtonma.gov/home

Municipal Vulnerability Preparedness (MVP): https://www.mass.gov/service-details/mvp-program-information



Town of Arlington, Massachusetts

Approval of Meeting Minutes from October 2, 2017

Summary:

9:05-9:15p.m. Board members will review minutes from the previous ARB meeting and provide

feedback for edits and vote. (10 mins.)

ATTACHMENTS:

Type File Name Description

Reference Material DRAFT_ARB_Minutes_10162017.pdf DRAFT Meeting Minutes dated October 16, 2017

Arlington Redevelopment Board October 16, 2017 Minutes Town Hall Annex, Second Floor Conference Room – 7:30pm

This meeting was recorded by ACMi.

PRESENT: Andrew Bunnell (Chair), Andrew West, Kin Lau, David Watson, Eugene Benson

STAFF: Jennifer Raitt

Correspondence: None.

The Chairman opened the meeting at 7:30pm and turned to the first item on the agenda, Environmental Design Review (EDR) application / process. Jennifer Raitt, Director, Planning and Community Development provided copies of the existing application and procedures and sought review and discussion for potential changes to the process. She further provided a memo to the Town dated February 28, 2017 and annotated by Staff on October 3, 2017 from RKG Associates, zoning recodification consultants, as guidance for the potential changes.

Mr. West sought clarity between the Special Permit and EDR criteria and felt that each should be approached separately and not as one process as one pertains to use and one pertains to appropriateness. Mr. Lau asked if there was a specific order of approval when multiple Town Boards and/or Committees are involved in the same project. Ms. Raitt stated that there is currently no specific order and that a preliminary discussion at the "All Board" meeting suggested that the Planning and Community Development Department act as a hub for applicants. Mr. Bunnell asked how much of the change could be done without Town Meeting approval. Additional topics of discussion included making improvements to the administrative process, adding other street locations that would be required to have an EDR, and strengthening Section 3.4.3e of the Zoning Bylaw. Additionally, the Board expressed a concern that more projects seem to lack architects and designers and discussed the possibility of a pre-application process which would include design review and guidance.

Mr. Bunnell moved to the next item on the agenda, Zoning Recodification update. Ms. Raitt shared the outreach documents that will be distributed at the October 18th Zoning Recodification Public Forum. The documents included: frequently asked questions, a memo from RKG Associates to the Town dated February 28, 2017 and annotated by Staff on October 3, 3017, an updated timeline, recodification-definitions, and a section by section comparison of the existing Zoning Bylaw to the proposed bylaw. Mr. Benson and Mr. Lau appreciated the time and effort put into the creation of the documents. Ms. Raitt stated that she had received few public comments and that additional comments will be accepted until November 10th. Should the Board move forward with the hearing draft, the proposed Public Hearing date would be December 11, 2017.

Mr. Bunnell moved to the next item on the agenda, Approval of Meeting Minutes from August 7, 2017 and September 11, 2017. Mr. Benson moved to approve the minutes from August 7, 2017 and September 11, 2017. Mr. Lau seconded. All voted in favor. (5-0).

Mr. Bunnell moved to the next item on the agenda, Correspondence from Lela Shepherd, Environmental Planner/Conservation Agent, regarding a Summary of Ch.91. Ms. Raitt stated Ms. Shepherd attended a conference on M.G.L. Chapter 91, and learned that planning boards play a role in Chapter 91 review when new construction happens around certain water bodies in town. Ms. Raitt further stated that there will be a process, but how it interfaces with the ARB is to be determined. Ms. Raitt suggested a meeting regarding the process with Mr. Benson, Mr. Stevens, Conservation Commission Chair, herself and Lela Shepherd to discuss this further.

Mr. Bunnell asked for updates. Mr. Benson provided a brief update on the Community Preservation Committee and the preliminary applications received for CPA funds.

Mr. Lau motioned to adjourn. Mr. Watson seconded. All voted in favor. (5-0).